

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS

FOR

**AMESBURY HERITAGE PARK**

**BROWNFIELD SOILS REMOVAL AND REMEDIATION**

AMESBURY, MA.

OWNER:

CITY OF AMESBURY

OCTOBER 2013

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

TABLE OF CONTENTS

DIVISION 0 – BIDDING AND CONTRACT REQUIREMENTS

00020 Invitation to Bid  
00100 Information for Bidders  
00300 Bid Form  
00310 Bid Bond  
00311 Certification Regarding Payment of Prevailing Wages  
00375 Statement of Tax Compliance  
00385 Bidders Qualification Form  
00430 Notice of Award  
00500 Form of Agreement  
00600 Payment Bond  
00610 Performance Bond  
00650 Notice to Proceed  
00700 General Conditions  
00800 Supplemental General Conditions  
00855 Special Conditions – Commonwealth of Massachusetts  
00905 Change Order Form  
00945 Certificate of Substantial Completion  
00950 Waiver of Liens  
00960 Certificate of Final Payment and Completion of Work

TECHNICAL SPECIFICATIONS

DIVISION 1 – GENERAL REQUIREMENTS

01010 Summary of Work  
01046 Control of Work  
01063 Miscellaneous Requirements  
01080 Abbreviations and Definitions  
01090 Reference Standards  
01200 Project Meetings  
01300 Submittals  
01310 Construction Progress Schedules  
01400 Quality Assurance  
01500 Temporary Facilities  
01568 Erosion Control, Sedimentation and Containment of Construction Materials  
01600 Control of Materials  
01610 Delivery, Storage and Handling  
01700 Contract Closeout  
01710 Cleaning Up  
01740 Warranties and Bonds

DIVISION 2 – SITE WORK

02005 Mobilization and Demobilization  
02050 Demolition and Removal of Pavement  
02100 Site Preparation and Restoration  
02140 Dewatering

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

02200 Earthwork  
02210 Earth Excavation, Backfill, Fill, and grading  
02211 Rock Excavation and Disposal  
02223 Screened Gravel  
02224 Bank Run Gravel  
02225 Gravel Borrow  
02270 Erosion and Sediment Control  
02300 Riprap  
02400 Dewatering, Control, and Diversion of Water  
02435 Crushed Stone

APPENDIX (A) PREVAILING WAGE RATES

APPENDIX (B) NOTICE OF INTENT

APPENDIX (C) ORDER OF CONDITIONS AND EXTENSION

APPENDIX (D) CONTRACT PLANS

APPENDIX (E) ASTM PHASE I ENVIRONMENTAL SITE ASSESSMENT  
25 WATER STREET

ASTM PHASE II ENVIRONMENTAL SITE ASSESSMENT  
27-31 WATER STREET

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

DIVISION 0  
BIDDING AND CONTRACT REQUIREMENTS

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

SECTION 00020

INVITATION TO BID

TOWN OF AMESBURY, MASSACHUSETTS

**AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION**

Sealed Bids for construction of "**AMESBURY HERITAGE PARK - BROWNFIELD SOILS REMOVAL AND REMEDIATION**" for the City of Amesbury, Massachusetts, will be received at the Office of Community & Economic Development located on the second floor of the City Hall, 62 Friend Street, Amesbury, MA 01913 until **10:30 am local time on Friday November 1, 2011**, at which time said Bids will be publicly opened and read aloud in the City Hall Auditorium.

Specifications are available at the Office of Community & Economic Development until 3:00 pm, Tuesday October 29, 2013.

The work at the Amesbury Heritage Park – Brownfield Soils Removal and Remediation consists of but is not limited to the following:

Furnish all labor, materials, equipment and incidentals necessary to complete all work necessary to remove and dispose of contaminated materials to a depth of approximately eighteen inches, remove and dispose of foundation walls, concrete slab, and existing asphalt walkway, backfill with acceptable materials and construct a temporary walkway

Each Bid shall be accompanied by a bid security in the form of a certified, treasurer's or cashier's check, bid bond, or cash in the amount of five (5) percent of the value of the Bid.

Contract Documents may be examined and obtained at the Office of Community & Economic Development located on the second floor of City Hall, 62 Friend Street, Amesbury, MA 01913 until 3:00 pm, Tuesday, October 29, 2013. No non-refundable deposit is required, and no non-refundable postage and handling fee will be charged for each set of documents requested by mail.

Successful bidder must furnish 100 percent Construction Performance Bond and 100 percent Construction Payment Bond with a surety company acceptable to the Owner.

Minimum Wage Rates as determined by the Commissioner of Department of Labor and Industries under the provision of the Massachusetts General Laws, Chapter 149, Sections 26 to 27D, as amended, apply to this project. It is the responsibility of the contractor, before bid opening, to request if necessary, any additional information on Minimum Wage Rates for those trades people who may be employed for the proposed work under this contract.

Contract time for the project shall be 120 calendar days commencing 10 days following effective date of the Agreement.

No Bidder may withdraw his/her Bid for a period of thirty (30) calendar days, after the actual date of the opening of the Bids.

Complete instructions for filing Bids are included in the Instructions to Bidders.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

The bidding and award of the Contract shall be in full compliance with Section 39M inclusive of Chapter 30 of the General Laws of the Commonwealth of Massachusetts as last revised.

**All Bidders must meet the Commonwealth of Massachusetts DOT “Prequalification in the Required Disciplines and Bonding Capacity.”**

The Owner reserves the right to reject any or all bids if it is in the public interest to do so.

CITY OF AMESBURY, MASSACHUSETTS

END OF SECTION

SECTION 00100

INFORMATION FOR BIDDERS

- 1.01 Project Identification
- 1.02 Receipt of Bids
- 1.03 Ability and Experience of Bidder
- 1.04 Information Not Guaranteed
- 1.05 Modifications and Withdrawal of Bids
- 1.06 Examination of Contract Documents and Sites
- 1.07 Addenda and Interpretations
- 1.08 Bids, Bonds and Award of Contract
- 1.09 Reduction in Scope of Work
- 1.10 Execution of the Agreement
- 1.11 Insurance Certificates
- 1.12 Notice to Proceed
- 1.13 Time Schedule for Completion of Work
- 1.14 Wage Rates
- 1.15 Laws and Regulations
- 1.16 Inspection of the Work
- 1.17 Sales Tax
- 1.18 Guarantees
- 1.19 Record Keeping
- 1.20 Engineer

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**1.01 PROJECT IDENTIFICATION**

- A. Owner: City of Amesbury, Massachusetts
- B. Awarding Authority: By it's Mayor
- C. Mailing Address: Office of Community & Economic Development  
City Hall, 62 Friend Street  
Amesbury, Massachusetts 01913
- D. Project Name: **AMESBURY HERITAGE PARK –  
BROWNFIELD SOILS REMOVAL AND  
REMEDICATION**

E. Project Descriptions: The project involves the removal and disposal of a concrete slab and foundation walls along with the excavation and disposal of contaminated soils on a 1.5 acre site which is being proposed for use as a park. The property address is 25 & 31 Water Street and is located adjacent to the Powow and Back Rivers. The contractor will be required to remove all materials to an approximate average depth of eighteen inches (18"). Dependent upon the condition of the soils, the depths may vary between six inches (6") to thirty six inches (36"). Base estimates for soils removal are approximately 3,388 cubic yards or 5,082 tons. Included in the project is the removal and disposal of 2600 square feet of asphalt, 540 linear feet of foundation walls to a depth of three feet (3') estimated at 158 tons, and a 200' x 50' concrete floor slab established at 784 tons. Backfill estimates are approximately 2,258 cubic yards or 3,388 tons. Soils are primarily a grey brown, granular urban fill with coal ash, clinkers and lesser amounts of glass, brick and concrete fragments. Areas of soil for excavation have been pre characterized and their documented quality meets typical asphalt batching or unlined/lined landfill acceptance criteria. Contractor will be required to top the site with loam and seed.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

The contractor will be required to move a small shed and some railroad artifacts to a property adjacent to the site.

Currently, there is an asphalt pedestrian walking path located on the site a portion of which will remain and approximately 250 feet to be removed. The contractor will be required to construct a replacement path on the site. Approximately, 250 feet of post and rail fencing adjacent to the path will be relocated adjacent to the new path.

Removal of contaminated soils within five feet (5') of building walls will require replacement with structural fill.

The project oversight will be provided by a MA Licensed Site Professional (LSP) serving as the owner's representative.

Project funding requires paying prevailing wages as provided in the bid document.

## **1.02 RECEIPT OF BIDS**

- A. General Bids for the project will be received by the Awarding Authority at the time and place stated in Section 00020, INVITATION TO BID, and then at said place publicly opened and read aloud.
- B. Each bid must be submitted in a sealed envelope, addressed to the Office of Community & Economic Development, City Hall, 62 Friend Street, Amesbury, MA 01913. Each sealed envelope containing a bid must be plainly marked on the outside with **AMESBURY HERITAGE PARK - BROWNFIELD SOILS REMOVAL AND REMEDIATION** and the envelope should bear on the outside the name of the Bidder and his address. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed to Amesbury's Office of Community & Economic Development at the above address. Each must be time stamped and signed by a City Employee upon receipt.
- C. All bids must be made on the bid form included in the specifications. All blank spaces for bid prices must be filled in, in ink or typewritten, and the bid form must be fully completed and executed when submitted. Only one (1) set of the bid documents is required.
- D. List of required Documents for General Bid submission:
  - 1. Section 00300, Bid Form
  - 2. Section 00310, Bid Bond (see Article 1.08 below)
  - 3. Section 00311, Bidder's Certification Regarding Payment of Prevailing Wages
- E. Section 00375, STATEMENT OF TAX COMPLIANCE, must be submitted to the Owner before the award of the contract.

## **1.03 ABILITY AND EXPERIENCE OF BIDDER**

- A. No award will be made to any bidder who cannot satisfy the Owner that he has sufficient ability and experience in this class of work and sufficient capital and



equipment to enable him to prosecute and complete the Work successfully within the time named. The Owner's decision or judgment on these matters shall be final, conclusive and binding.

#### **1.04 INFORMATION NOT GUARANTEED**

- A. All information given in the Contract Documents relating to the subsurface and other conditions, natural phenomena, existing pipes and other structures is from the best sources at present available to Owner. All such information is furnished only for the information and convenience of bidders and is not guaranteed.
- B. It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes or other structures encountered during construction will be the same as those indicated in the contract documents.
- C. It is agreed further and understood that no bidder or contractor shall use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner, the Engineer, or the LSP arising from or by reason of any variance which may exist between the information made available and the actual subsurface or other conditions, natural phenomena, existing pipes or other structures actually encountered during the construction, except as may otherwise be expressly provided for in the Contract Documents

#### **1.05 MODIFICATIONS AND WITHDRAWAL OF BIDS**

- A. The Owner may waive any informalities or minor defects or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. Should there be reasons why the Contract cannot be awarded within the specified period; the time may be extended by mutual agreement between Owner and the Bidder.
- B. No Bidder may withdraw his bid within thirty (30) calendar days after the actual date of the bid opening.
- C. Prior to Bid Opening, bids may be withdrawn upon written or telegraphic request of the Bidder provided confirmation of any telegraphic withdrawal, signed by the Bidder, is placed in the mail and postmarked prior to the time set for the Bid Opening. Bid documents and security of any Bidder withdrawing his bid in accordance with the foregoing conditions will be returned.

#### **1.06 EXAMINATION OF CONTRACT DOCUMENTS AND SITE(S)**

- A. Each Bidder is responsible for inspecting the site(s) and for reading and being thoroughly familiar with the contract documents. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to their bid.
- B. Bidders must satisfy themselves of the accuracy of their bid by examination of the site(s) and a review of the Contract Documents. A site visit will be conducted on October 18, 2013, 9:00 a.m. at the Water Street location. After bids have been

submitted, the Bidder shall not assert that there was a misunderstanding concerning the quantities of work or of the nature of the work to be done.

- C. The Contract Documents contain the provisions required for the project. Information obtained from an officer, agent, or employee of the Owner, LSP, or any other person shall not affect the risks or obligations assumed by the Bidder or relieve him from fulfilling any of the conditions of the Contract.

#### **1.07 ADDENDA AND INTERPRETATIONS**

- A. All questions by prospective Bidders as to the interpretation of the Contract Documents shall be submitted in writing to the Engineer and shall be in their possession at least ten (10) calendar days before the date herein set for the receipt of bids. The Engineer will then email and/or mail via certified mail with return receipt requested, to Bidders who have taken out the Contract Documents, at the addresses given by them, not less than five (5) calendar days before said date, interpretations of all questions so raised which, in their opinion, required interpretation.
- B. Oral or telephone interpretations will not be generally made, and if made, shall be strictly informal and not legally valid or binding.
- C. Written interpretations shall be made in the form of Addenda to the Bidding and Contract Documents. Bidders are urged to communicate all errors and discrepancies found in the Bidding and Contract Documents to the Engineer. Telephone calls pointing out any such errors or discrepancies will be taken by the Engineer, but only for the purpose of receiving the information in order that it may be properly processed, and not for interpretation or clarification.
- D. Each Bidder shall be responsible for determining that they have received all addenda issued and shall acknowledge said receipt on Section 00300, BID FORM.

#### **1.08 BIDS, BONDS, AND AWARD OF CONTRACT**

- A. Each bid must be accompanied by a bid bond, certified check or a treasurer's or cashier's check issued by a responsible bank or trust company, payable to the Owner in the amount of five (5) percent of the value of the bid. As soon as bid prices have been compared, the Owner will return the bid deposits of all except the three (3) lowest responsible Bidders. When the Agreement is executed, the bid deposits of the two (2) remaining unsuccessful Bidders will be returned. The bid deposit of the successful Bidder will be retained until the payment bond and performance bond have been executed and approved, after which it will be returned.
- B. Each Bidder shall sign his name in the space provided for. If a partnership or corporation makes the bid, the name and address of the partnership or corporation shall be shown, together with the names of the partners or the officers. A bid made by a partnership shall be acknowledged by one of the partners; a bid made by a corporation shall be acknowledged by one of the authorized officers thereof, and the corporate seal attached.
- C. A conditional or qualified bid will not be accepted.

- D. Bids will be compared on the basis of the total price stated in the bid. In the event that there is a discrepancy in the bid between written words and figures, the prices written in words shall govern. The Owner agrees to examine and consider each bid submitted in consideration of the bidder's agreements, as hereinabove set forth and as set forth in the bid. The several bids will be compared on the basis of the prices bid, and the contract awarded to the lowest responsible and eligible Bidder.
- E. The Owner may make such investigations as he deems necessary to determine the ability of the Bidder to perform the work and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein. The Owner may also reject bids which in its sole judgment are either incomplete, conditional, obscure or not responsive or which contain additions not called for, erasures not properly initialed, alterations, or similar irregularities, or the Owner may waive such omissions, conditions or irregularities.
- F. The low Bidder shall supply the names and addresses of major material Suppliers and Subcontractors when required to do so by the Owner.
- G. A performance bond and a payment bond, each in the amount of one hundred (100) percent of the contract price, with a corporate surety approved by the Owner, will be required of the General Contractor for the faithful performance of the contract, and may be required by the General Contractor of Sub-contractors. If bonds are required of sub-contractors, the General Contractor shall pay the premiums for these bonds.
- H. Attorneys-in-fact who sign bid bonds or payment bonds and performance bonds must file with each bond a certified and effective dated copy of their power of attorney.

#### **1.09 REDUCTION IN SCOPE OF WORK**

- A. The Owner reserves the right to decrease the scope of the work to be done under this contract and to omit any work in order to bring the cost within available funds. To this end, the Owner reserves the right to reduce the quantity of any items or omit all of any progress of work. The Owner further reserves the right, at any time during the progress of the work, to restore all or part of any items previously omitted or reduced. Exercise by the Owner of the above rights shall not constitute any ground or basis of claim for damages or for anticipated profits on the work omitted.

#### **1.10 EXECUTION OF THE AGREEMENT**

- A. The party to whom the Contract is awarded will be required to execute the Section 00500, FORM OF AGREEMENT and obtain the performance bond, payment bond, and certificates of insurance within ten (10) calendar days from the date when Section 00430, NOTICE OF AWARD is delivered to the Bidder. If any Bidder fails to execute the Section 00500, FORM OF AGREEMENT and furnish a performance bond or payment bond as stated in his bid, his bid deposit shall become the property of the Owner as liquidated damages, provided that in case of death, disability or other unforeseen circumstances affecting the Bidder, his bid

deposit may be returned to him, provided further that the amount of the bid deposit to be retained shall not exceed the difference between the low bid and the bid of the next lowest eligible Bidder.

#### **1.11 INSURANCE CERTIFICATES**

- A. The Contractor will not be permitted to start any construction work until he has submitted certificates covering all insurances called for under Paragraph 21 of the General Conditions.

#### **1.12 NOTICE TO PROCEED**

- A. Section 00650, NOTICE TO PROCEED shall be issued within ten (10) days of the execution of the Section 00500, FORM OF AGREEMENT by the Owner. Should there be reasons why the Section 00650, NOTICE TO PROCEED cannot be issued within such period; the time may be extended by mutual agreement between the Owner and Contractor. If the Section 00650, NOTICE TO PROCEED has not been issued within the ten-day period or within the period mutually agreed upon, the Contractor may terminate the Section 00500, FORM OF AGREEMENT without further liability on the part of either party.

#### **1.13 TIME SCHEDULE FOR COMPLETION OF WORK**

- A. The total time period for completion of all work required under this contract is **120** consecutive calendar days, using no more than **90** on-site working days. Work performed beyond the **120** consecutive calendar day period and/or **90** on-site working day period will be subject to liquidated damages in the amount specified herein.
- B. It is the intent of this contract that the work will begin immediately after the execution of this contract and for the work to be completed in accordance with the schedule outlined in the contract documents.

#### **1.14 WAGE RATES**

- A. Minimum wage rates, as determined by the Department of Labor and Workforce Development, under the provision of the Massachusetts General Laws, Chapter 149, Sections 26 to 27H, as amended, apply to this Project. Additionally Federal Davis Bacon wage rates as determined by the U.S. Department of Labor are applicable. It is the responsibility of the Bidder, before Bid Opening, to request, if necessary, any additional information on Wage Rates for those trade people who are not covered by the applicable Wage Decision, but who may be employed for the proposed work under this Contract.
- B. In accordance with Chapter 149, Section 27B, it is the responsibility of the Contractor and any Subcontractors to submit payroll records to the Owner on a weekly basis.

#### **1.15 LAWS AND REGULATIONS**

- A. Applicable provisions of Massachusetts General Laws and Regulations and/or the United States Code and Code of Federal Regulations govern this Contract and any provision violation of the foregoing shall be deemed null, void and of no effect.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

- B. All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout.
- C. This project is subject to all of the OSHA Safety and Health Regulations (see 29 CFR Part 1926/1910 and all subsequent amendments) as promulgated by the United States Department of Labor on June 24, 1974 and to the Massachusetts, "Construction Industry Rules and Regulations", 454 CMR 10.00, et seq. Contractors shall be familiar with the requirements of these regulations, and all other pertinent regulations and requirements.
- D. The Contract is being bid on under the provisions of Massachusetts General Laws Chapter 30 Section 39M.
- E. This Project is a local project being bid, awarded and administered by the Owner (City of Amesbury, Massachusetts) through its awarding authority (Mayors Office). All bidders are on notice that the Contractor awarded this work shall be specifically required:
- To possess and/or obtain all licenses and permits necessary to complete performance under this Contract;
  - To comply with M.G.L. Chapter 62C, Section 49A (compliance with Tax Laws);
  - To comply with M.G.L. Chapter 151A, Section 19A (licenses to conduct business; contributions);
  - To comply with M.G.L. Chapter 152 (Workers Compensation);
  - To comply with all relevant Prevailing Wage Rates and Employment Laws;
  - To comply with M.G.L. Chapter 156B and Chapter 181, Section 4, and has filed all required certificates and reports with the Secretary of State and the Attorney General's Office;
  - To comply with Federal Anti-Lobbying requirements of 31 USC 1352;
  - That it and any of its subcontractors are not currently disbarred or suspended by the Federal Government or the Commonwealth under any law, regulation or Executive Order;
  - To comply with M.G.L. Chapter 268A (Conflict of Interest)

Federal and State laws and regulations prohibiting discrimination, including the American Disabilities Act, the Rehabilitation Act, the Federal Fair Housing Act, unlawful discrimination (M.G.L. Chapter 151B), business discrimination (M.G.L. Chapter 151E), the Public Accommodations Law (M.G.L. Chapter 272, Sections 92A, 98 and 98A), the Massachusetts Constitution, Article CXIV, M.G.L. Chapter 93, Section 103, the Telecommunications Act, and the Attorney General Office Protection of Elders, apply to this Contract.

## **1.16 INSPECTION OF THE WORK**

- A. The Contractor shall provide at all times proper facilities for access and inspection by representatives of the Owner, Federal, State or other agency having jurisdiction over the work of this project.

#### **1.17 SALES TAX**

- A. This project is exempt from State Sales and Use or Excise Taxes to the extent allowed by law.

#### **1.18 GUARANTEES**

- A. In addition to other guarantees due the Owner, the Contractor guarantees that the Work and services to be performed under the Contract, and all workmanship, materials and equipment performed, furnished, used or installed in the construction shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the Contract Documents, that the strength of all parts of all manufactured equipment shall be adequate and as specified and that the performance test requirements of the Contract shall be fulfilled. This guarantee shall be for a period of one year from and after the date of completion and acceptance of the Work as stated in the final estimate. If part of the Work is accepted in accordance with that subsection of this Agreement titled Partial Acceptance, the guarantee for that part of the Work shall be for a period of one year from the date fixed for such acceptance. The Performance Bond shall remain in full force and effect through the Guarantee Period.
- B. If at any time within the said period of guarantee any part of the Work requires repairing, correction or replacement, the Owner may notify the Contractor in writing to make the required repairs, correction, or replacements. If the Contractor neglects to commence making such repairs, corrections, or replacements to the satisfaction of the Owner within three days from the date of receipt of such notice, or having commenced fails to prosecute such Work with diligence, the Owner may employ other persons to make the same, and all direct and indirect costs of making said repairs, correction or replacements, including compensation for additional professional services, shall be paid by the Contractor.

#### **1.19 RECORD KEEPING**

- A. The Contractor is reminded that the provisions of Chapter 30, Section 39R relative to record keeping apply to this Contract. A copy of c.30, s.39R is included in Section 00855, SPECIAL CONDITIONS - COMMONWEALTH OF MASSACHUSETTS, of the Contract Documents. A brief summary of the requirements is as follows:
  - 1. The Contractor and all subcontractors shall maintain books, records, and accounts at least six (6) years after the final payment. They will be subject to inspection by the awarding authority, officers of the Inspector General, or the Deputy Commissioner of Capital Asset Management and Maintenance.
  - 2. Any changes in record keeping or recording transactions that affect the awarding authority shall be explained along with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

3. The Contractor shall file with the awarding authority a statement of management as to whether the system of internal accounting controls has been established.
4. The Contractor shall file with the awarding authority a statement prepared and signed by an independent certified public accountant that an examination has been made of internal accounting controls.

**1.20 ENGINEER**

- A. The Engineer for this project is Amesbury Office of Community & Economic Development. Questions regarding the Contract Documents shall be directed to:

Office of Community & Economic Development:  
Joseph W. Fahey, Director  
Phone: (978) 388-8110

Or

Jon Higgins, Higgins Environmental Associates, Inc.  
Phone: (978) 834-9000

END OF SECTION

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

SECTION 00300

BID FORM

To the City of Amesbury, Massachusetts, herein called the Owner, acting by and through its Mayor, for **AMESBURY HERITAGE PARK - BROWNFIELD SOILS REMOVAL AND REMEDIATION**.

The Undersigned, as bidder, herein referred to as singular and masculine, declares as follows:

- (1) The only parties interested in this BID as Principals are named herein;
- (2) This BID is made without collusion with any other person, firm, or corporation;
- (3) No officer, agent, or employee of the Owner is directly or indirectly interested in this BID;
- (4) He has carefully examined the site of the proposed Work and fully informed and satisfied himself as to the conditions there existing, the character and requirements of the proposed Work, the difficulties attendant upon its execution and the accuracy of all estimated quantities stated in this BID, and he has carefully read and examined the Drawings, the annexed proposed AGREEMENT and the Specifications and other Contract Documents therein referred to and knows and understands the terms and provisions thereof;
- (5) He understands that information relative to subsurface and other conditions, natural phenomena, existing pipes and other structures (surface and/or subsurface) has been furnished only for his information and convenience without any warranty or guarantee, expressed or implied, that the subsurface and/or other conditions, natural phenomena, existing pipes and other structures (surface and/or subsurface) actually encountered will be the same as those shown on the Drawings or in any of the other Contract Documents and he agrees that he shall not use or be entitled to use any such information made available to him through the Contract Documents or otherwise or obtained by him in his own examination of the site, as a basis of or ground for any claim against the Owner or the Engineer arising from or by reason of any variance which may exist between the aforesaid information made available to or acquired by him and the subsurface and/or other conditions, natural phenomena, existing pipes and other structures (surface and/or subsurface) actually encountered during the construction work, and he has made due allowance therefore in this BID;
- (6) And he understands that the quantities of work tabulated in this BID or indicated on the Drawings or in the Specifications or other Contract Documents are only approximate and are subject to increase or decrease as deemed necessary by the Engineer/Owner or LSP; and he agrees that, if this BID is accepted he will contract with the Owner, as provided in the copy of the Contract Documents deposited in the office of the Engineer, this BID form being part of said Contract Documents, and that he will perform all the work and furnish all the materials and equipment, and provide all labor, services, plant, machinery, apparatus, appliances, tools, supplies and all other things required by the Contract Documents in the manner and within the time therein prescribed and according to the requirements of the Engineer as therein set forth, and that he will take in full payment therefore the lump sum for the Work as stated in the schedule below.



AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

(Note: Bidders must bid on each item. All entries in the entire BID must be made clearly and in ink; prices bid must be written in both words and figures. In case of discrepancy, the amount shown in words will govern.)

(Bidders should insert extended item prices obtained from quantities and unit prices.)

TO: City of Amesbury  
City Hall, 62 Friend Street  
Amesbury, Massachusetts

PROJECT: **AMESBURY HERITAGE PARK –  
BROWNFIELD SOILS REMOVAL AND REMEDIATION**

DATE: \_\_\_\_\_

SUBMITTED BY:

\_\_\_\_\_  
(full name)

\_\_\_\_\_  
(full address)

1. OFFER:

Having examined the Place of the Work and all matters referred to in the Instructions to Bidders and the Contract Documents prepared by The City of Amesbury, the undersigned, hereby offer to enter into a Contract to perform the Work, AMESBURY HERITAGE PARK - BROWNFIELD SOILS REMOVAL AND REMEDIATION, for the Price of:

\$..... dollars, in lawful money of the United States of America and,

We have included herewith, the unit price bid forms, and the required security deposit or Bid Bond as required by the Instruction to Bidders.

This project is exempt from all Massachusetts sales taxes.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

Note:

The unit price for each item must be written in words and figures. In case of discrepancy, the amount shown in words will govern.

BID ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT BID PRICE	TOTAL COST
1.	Contract Bonds	LS	1	_____	_____
TOTAL PRICE IN WORDS: _____					
2.	General Requirements	LS	1	_____	_____
TOTAL PRICE IN WORDS: _____					
3.	Mobilization	LS	1	_____	_____
Lump Sum bid for mobilization cannot exceed 5% of total the total bid					
TOTAL PRICE IN WORDS: _____					
4.	Erosion and Sediment Control	LS	1	_____	_____
TOTAL PRICE IN WORDS: _____					
5.	Control of Water	LS	1	_____	_____
TOTAL PRICE IN WORDS: _____					
6.	Clearing and Grubbing	LS	1	_____	_____
TOTAL PRICE IN WORDS: _____					
7.	Relocate Shed, RR Crossing Signal, Switch and Timbers	LS	1	_____	_____
TOTAL PRICE IN WORDS: _____					
CARRIED FORWARD _____					

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

Note:

The unit price for each item must be written in words and figures. In case of discrepancy, the amount shown in words will govern.

BID ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT BID PRICE	TOTAL COST
BROUGHT FORWARD _____					
8.	Remove and Reinstall Timber Railing	LF	250	_____	_____
TOTAL PRICE IN WORDS: _____					
9.	Safety Fencing	LF	650	_____	_____
TOTAL PRICE IN WORDS: _____					
10.	Contaminated Soils Excavation & Hauling Disposal Lined Landfill	TON	5082	_____	_____
TOTAL PRICE IN WORDS: _____					
11.	Contaminated soils Excavation, Hauling & Disposal Unlined Landfill	TON	5082	_____	_____
TOTAL PRICE IN WORDS: _____					
12.	Concrete Foundation and slab Excavation, Hauling & Disposal	TON	900	_____	_____
TOTAL PRICE IN WORDS: _____					
13	Asphalt Excavation, Hauling and Disposal	TON	2600	_____	_____
TOTAL PRICE IN WORDS: _____					
14.	Bank Gravel Borrow	TON	3388	_____	_____
TOTAL PRICE IN WORDS: _____					
CARRIED FORWARD _____					

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

Note:

The unit price for each item must be written in words and figures. In case of discrepancy, the amount shown in words will govern.

BID ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT BID PRICE	TOTAL COST
-------------	-------------	------	----------	-------------------	---------------

BROUGHT FORWARD \_\_\_\_\_

15.	Loam & Seed	CY	1130	_____	_____
-----	-------------	----	------	-------	-------

TOTAL PRICE IN WORDS: \_\_\_\_\_

16.	Gravel Borrow Fill Placement	TON	3388	_____	_____
-----	---------------------------------	-----	------	-------	-------

TOTAL PRICE IN WORDS: \_\_\_\_\_

17.	Crushed Stone	TON	50	_____	_____
-----	---------------	-----	----	-------	-------

TOTAL PRICE IN WORDS: \_\_\_\_\_

18.	Demobilization	LS	1	_____	_____
-----	----------------	----	---	-------	-------

Lump Sum bid for demobilization cannot exceed 2% of total the total bid

TOTAL PRICE IN WORDS: \_\_\_\_\_

TOTAL BASE BID \_\_\_\_\_

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

The undersigned agrees that for extra work, if any, will be performed in accordance with Article 10 of the General Conditions of the Contract and will be paid for in accordance with Article 11 of the General Conditions of the Contract.

The bid security accompanying this BID shall be in the amount of 5 percent of the BID.

**If this BID is accepted by the Owner, the undersigned agrees to complete the entire work provided to be done under the Contract within 120 calendar days as stipulated in the AGREEMENT. Liquidated damages for each calendar day of delay shall be \$800 as stipulated in the AGREEMENT.**

As provided in the INSTRUCTIONS TO BIDDERS, the bidder hereby agrees that he will not withdraw this BID within thirty (30) consecutive calendar days after the actual date of the opening of Bids and that, if the Owner shall accept this BID, the bidder will duly execute and acknowledge the AGREEMENT and furnish, duly executed and acknowledged, the required CONTRACT BONDS within ten (10) days after notification that the AGREEMENT and other Contract Documents are ready for signature.

Should the bidder fail to fulfill any of his agreements as hereinabove set forth, the Owner shall have the right to retain as liquidated damages the amount of the bid check or cash which shall become the Owner's property. If a bid bond was given, it is agreed that the amount thereof shall be paid as liquidated damages to the Owner by the Surety.

This BID includes Addenda number(s) \_\_\_\_\_ (To be filled in by Bidder if Addenda are issued.)

The time period for holding bids where Federal approval is not required is 30 days, Saturdays, Sundays and legal holidays included, after the opening of bids and where Federal approval is required, the time period for holding bids is 30 days, Saturdays, Sundays and legal holidays excluded after Federal approval.

The undersigned must furnish a 100 percent Construction Performance Bond and a 100 percent Construction Payment Bond with a surety company acceptable to the Owner. The name and address of the surety company who will sign the performance and payment bonds is as follows:

\_\_\_\_\_  
\_\_\_\_\_

The bidder, by submittal of this BID, agrees with the Owner that the amount of the bid security deposited with this BID fairly and reasonably represents the amount of damages the Owner will suffer due to the failure of the bidder to fulfill his agreements as above provided.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that he will comply fully with all laws and regulations applicable to awards made subject to MGL Ch. 30, Section 39M. The bidding and award of the contract will be in full compliance with Section 39M inclusive of Chapter 30 of the General Laws of the Commonwealth of Massachusetts as last revised.

The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the Commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

provisions of any other chapter of the General Laws or any rule or regulation promulgated there under.

Pursuant to M.G.L. Ch. 62C, sec. 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The attached CERTIFICATE OF NON-COLLUSION must be signed and submitted as part of the Bid Proposal.

(SEAL) \_\_\_\_\_ L.S.  
(Name of Bidder)

By \_\_\_\_\_  
(Signature and title of authorized representative)

\_\_\_\_\_  
(Business address)

\_\_\_\_\_  
(City and State)

Date \_\_\_\_\_

The bidder is a corporation incorporated in the State (or Commonwealth) of \_\_\_\_\_ - a partnership - an individual. (Bidder must add and delete as necessary to make this sentence read correctly.)

(Note: If the bidder is a corporation, affix corporate seal and give below the names of its president, treasurer, and general manager if any; if a partnership, give full names and residential addresses of all partners; and if an individual, give residential address if different from business address.)

The required names and addresses of all persons interested in the foregoing Bid, as Principals, are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The bidder is requested to state below what work of a similar character to that included in the proposed Contract he has done and to give references that will enable the Owner to judge his experience, skill, and business standing.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[illegible]

\* \* \*

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the work "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

\_\_\_\_\_  
(Name of person signing bid or proposal)

\_\_\_\_\_  
(Name of business)

END OF SECTION



DOCUMENT 00310

BID BOND

Know all men by these presents, that we, the undersigned, \_\_\_\_\_ as Principal,  
and \_\_\_\_\_ as Surety, are hereby  
held and firmly bound unto \_\_\_\_\_ as Owner in the penal sum  
of \_\_\_\_\_ for the payment of which, well and  
truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

The Condition of the above obligation is such that whereas the Principal has submitted to  
\_\_\_\_\_ a certain Bid, attached hereto  
and hereby made a part hereof to enter into a contract in writing, for the  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Now, therefore,

- (a) If said Bid shall be rejected, or
- (b) If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said Bid) and shall furnish a Bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid, then this obligation, shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid and said Surety does hereby waive notice of any such extension.

In witness whereof, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

\_\_\_\_\_  
Principal (L.S.)

\_\_\_\_\_  
Surety

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

By: \_\_\_\_\_

Important - Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

DOCUMENT 00311

**CERTIFICATION REGARDING  
PAYMENT OF PREVAILING WAGES**

The undersigned Bidder hereby certifies, under the pains and penalties of perjury, that the foregoing bid is based upon the payment to laborers to be employed on the project of wages in an amount no less than the applicable prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development, Division of Occupational Safety or the U.S. Department of Labor whichever is greater. The undersigned bidder agrees to indemnify the awarding authority for, from and against an loss, expense, damages, actions or claims, including any expense incurred in connection with any delay or stoppage of the project work, arising out of or as a result of (1) the failure of the said bid to be based upon the payment of the said applicable prevailing wage rates or (2) the failure of the bidder, if selected as the Contractor, to pay laborers employed on the project the said applicable prevailing wage rates.

DATED: \_\_\_\_\_

NAME OF BIDDER: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

DOCUMENT 00375

**STATEMENT OF TAX COMPLIANCE**

I, \_\_\_\_\_, as \_\_\_\_\_ of  
(Title)

\_\_\_\_\_, whose principal place of  
(Business)

business is located at \_\_\_\_\_, do hereby certify that the  
above-named \_\_\_\_\_ has complied with all laws of the  
Commonwealth of Massachusetts relating to taxes, in accordance with the provisions of  
Massachusetts General Laws, Chapter 62C, S.49A, as amended.

Signed under the penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated: \_\_\_\_\_  
(Authorized Signature)



3)

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

DOCUMENT 00430

**NOTICE OF AWARD**

**To:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Description:

**AMESBURY HERITAGE PARK - BROWNFIELD SOILS REMOVAL AND  
REMEDICATION**

The Owner has considered the Bid submitted by you for the above described work in response to its DOCUMENT 00020, INVITATION TO BID dated \_\_\_\_\_, 20\_\_\_\_, and DOCUMENT 00100, INFORMATION FOR BIDDERS. You are hereby notified that your Bid has been accepted in the amount of \$\_\_\_\_\_.

You are required by the DOCUMENT 00100, INFORMATION FOR BIDDERS to execute the DOCUMENT 00500, FORM FOR AGREEMENT and furnish the required Contractor's Performance Bond, Payment Bond and Certificates of Insurance within ten (10) calendar days from the date of this Notice of Award. If you fail to execute said Agreement and to furnish said Bonds within ten (10) days from the date of this Notice of Award, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Owner. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Owner: CITY OF AMESBURY, MA.

By its Mayor

\_\_\_\_\_

\_\_\_\_\_  
Chief Financial Officer

**Acceptance of Notice:**

Receipt of the above Notice to Proceed is hereby Acknowledged by:

\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

DOCUMENT 00500

**FORM FOR AGREEMENT**

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Amesbury, Massachusetts, hereinafter called "Owner", acting by and through its Mayor, and \_\_\_\_\_, hereinafter called "Contractor", doing business as \_\_\_\_\_ (a corporation, or a partnership, or an individual).

Witnesseth: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will commence and complete the work for **AMESBURY HERITAGE PARK - BROWNFIELD SOILS REMOVAL AND REMEDIATION**.
2. The Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project described herein.
3. The Contractor will commence the work required by the Contract Documents within 10 calendar days after a date to be specified in DOCUMENT 00650, NOTICE TO PROCEED and will complete the project within 120 consecutive calendar days (using no more than 90 on-site working days) thereafter, unless the period for completion is extended otherwise by the Contract Documents. It is the intent of this contract for the work to begin after execution of this agreement and to complete the work within the schedule specified.
4. Work performed beyond this Contract Time period (Completion) will be subject to liquidated damages. The Contractor agrees to pay as liquidated damages the sum of \$800.00 for each consecutive calendar day and \$800.00 for each working day thereafter as provided in Article 15 of the DOCUMENT 00700, GENERAL CONDITIONS.
5. The Contractor agrees to perform all of the work described in the Contract Documents and comply with the terms therein for the sums shown in DOCUMENT 00300, BID FORM.
6. The Contractor agrees that the "direct labor mark-up" rate for any change order work performed under this Agreement will be 15 percent. The "direct labor mark-up" rate shall account for the cost of Worker's Compensation Insurance, Federal Social Security and State Unemployment Compensation as described in DOCUMENTS 00700, GENERAL CONDITIONS, ARTICLE 14.1(c) (2), CHANGES IN CONTRACT PRICE.
7. The Contractor shall not discriminate against or exclude any person from participation herein on grounds of race, religion, color, sex, age, or national origin; and that it shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to race, religion, color, sex, age, handicapped status, or national origin.
8. The Contractor shall not participate in or cooperate with an international boycott, as defined in Section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws.



AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

9. Article XII of the "Commonwealth of Massachusetts Modified Supplemental Equal Opportunity Anti-discrimination and Affirmative Action Program" requires that the Contractor's certification form, which must be signed by the successful low bidder prior to award by the contracting agency, must appear in the Contract and the subcontractors certification form, which must be signed by the prospective subcontractor(s) must be submitted to the Contractor and included in the subcontract.
10. The term "Contract Documents" means and includes the following:
  - (A) Advertisement for Bids
  - (B) Information for Bidders
  - (C) Bid Form
  - (D) Bid Bond
  - (E) Certification Regarding Payment of Prevailing Wages
  - (F) Statement of Tax Compliance
  - (G) Bidders Qualification Form
  - (H) Notice of Award
  - (I) Form for Agreement
  - (J) Payment Bond
  - (K) Performance Bond
  - (L) Notice to Proceed
  - (M) General Conditions
  - (N) Supplementary General Conditions  
Special Conditions - Commonwealth of Massachusetts
  - (O) Change Order Form
  - (P) Certificate of Substantial Completion
  - (Q) Waiver of Liens
  - (R) Certificate of Final Payment and Completion of Work
  - (S) Drawings numbered 1 and 2 dated October 2013 and Specifications dated October 2013 prepared by the City of Amesbury.
  - (T) Addenda No. \_\_\_\_\_
11. The Owner will pay to the Contractor in the manner and at such times as set forth in the Contract Conditions such amounts as required by the Contract Documents.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

12. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

On witness whereof, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in six (6) copies, each of which shall be deemed an original on the date first above written.

**Owner:** CITY OF AMESBURY, MASSACHUSETTS

By its Mayor\_\_\_\_\_

(SEAL)

Attest: \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**Contractor:** \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_

(SEAL)

Attest: \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

The undersigned, in compliance with the Commonwealth of Massachusetts General Laws Chapter 44, Section 31C, certifies that an appropriation in the amount required for this contract is available and \_\_\_\_\_ is authorized to execute this contract and approve all requisitions and change orders.

\_\_\_\_\_

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Date

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

ATTACHMENT A-1

A. Contractor's Certification

A contractor will not be eligible for award of a contract unless such contractor has submitted the following certification, which is deemed a part of the resulting contract:

Contractor's Certification\_\_\_\_\_

Name of the General Contractor

Certifies that:

1. It intends to use the following listed construction trades in the work under contract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

2. Will comply with the minority workforce ratio and specific affirmative action steps contained herein: and
3. Will obtain from each of its subcontractors and submit to the contracting or administering agency prior to the award of any subcontract under this contract the subcontractor's certification required by these bid conditions.

\_\_\_\_\_

Signature of Authorized Representative or Contractor

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

DOCUMENT 00600

**PAYMENT BOND**

Know all men by these presents that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called  
Principal,  
(Corporation, Partnership or Individual)

and \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto the \_\_\_\_\_

\_\_\_\_\_  
hereinafter called Owner, in the penal sum of:

\_\_\_\_\_  
Dollars (\$) )

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of: \_\_\_\_\_

Now, therefore, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such Work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void, otherwise to remain in full force and effect.

Provided, further, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the Contract Documents accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

time, alteration or addition to the terms of the contract or to the work or to the Contract Documents.

Provided, further, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

In witness whereof, this instrument is executed in \_\_\_\_\_ counterparts, each one of which  
(number)

shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

(SEAL)

Attest:

\_\_\_\_\_

***Principal***

By \_\_\_\_\_ By \_\_\_\_\_  
Witness as to Principal Contractor

\_\_\_\_\_  
Name Name

\_\_\_\_\_  
Address Address

\_\_\_\_\_

(SEAL)

Attest:

\_\_\_\_\_

Surety

By \_\_\_\_\_ By \_\_\_\_\_  
Witness as to Surety Attorney-in-Fact

\_\_\_\_\_  
Name Name

\_\_\_\_\_  
Address Address

\_\_\_\_\_

Notes:

1. Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners must execute the Bond.
2. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

DOCUMENT 00610

**PERFORMANCE BOND**

Know all men by these presents that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal,  
(Corporation, Partnership or Individual)

and \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto the \_\_\_\_\_

hereinafter called Owner, in the penal sum of:

\_\_\_\_\_  
Dollars (\$) )

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of: \_\_\_\_\_

Now, therefore, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

Provided, further, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the Contract Documents accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the Contract Documents.

Provided, further, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

In witness whereof, this instrument is executed in \_\_\_\_\_ counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

(SEAL)

Attest: \_\_\_\_\_

Principal

By \_\_\_\_\_  
Witness as to Principal

By \_\_\_\_\_  
Contractor

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

(SEAL)

Attest: \_\_\_\_\_

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Witness as to Surety

By \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

Notes:

1. Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners must execute the Bond.
2. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

DOCUMENT 00650

**NOTICE TO PROCEED**

To: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby notified to commence Work in accordance with the Agreement dated \_\_\_\_\_, 20\_\_, on or before \_\_\_\_\_, 20\_\_, and you are to complete the Work within 120 consecutive calendar days using no more than 90 on-site working days thereafter. The date of completion of all Work is therefore \_\_\_\_\_, 20\_\_.

CITY OF AMESBURY, MA.

By its Mayor

\_\_\_\_\_

Acceptance of Notice to Proceed:

Receipt of the above Notice to Proceed is hereby  
acknowledged by \_\_\_\_\_,  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_



DOCUMENT 00700

GENERAL CONDITIONS

- |  |   |
|--|---|
| 1. Definitions                                 | 19. Payments to Contractor                        |
| 2. Additional Instructions and Detail Drawings | 20. Acceptance of Final Payment as Release        |
| 3. Schedules, Reports and Records              | 21. Insurance                                     |
| 4. Drawings and Specifications                 | 22. Contract Security                             |
| 5. Shop Drawings                               | 23. Assignments                                   |
| 6. Materials, Services and Facilities          | 24. Indemnification                               |
| 7. Inspection and Testing                      | 25. Separate Contracts                            |
| 8. Substitutions                               | 26. Subcontracting                                |
| 9. Patents                                     | 27. Engineer's Authority                          |
| 10. Surveys, Permits, Regulations              | 28. Land and Rights-of-Way                        |
| 11. Protection of Work, Property, Persons      | 29. Guaranty                                      |
| 12. Supervision by Contractor                  | 30. Claims and Disputes                           |
| 13. Changes in the Work                        | 31. Taxes   |
| 14. Changes in Contract Price                  | 32. Interpretation of Drawings and Specifications |
| 15. Time for Completion and Liquidated Damages | 33. Site Regulations                              |
| 16. Correction of Work                         | 34. Limitations of Data Presented                 |
| 17. Subsurface Conditions                      | 35. Health and Safety Equipment                   |
| 18. Suspension of Work, Termination and Delay  |   |
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1. DEFINITIONS

Wherever used in the Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

- 1.1 ADDENDUM - A written or graphic instrument issued prior to the execution of the Contract, which modifies or interprets the Contract Documents, and/or Drawings and Specifications, by additions, deletions, clarifications or corrections.
- 1.2 AWARDING AUTHORITY - The authorized agent or representative of the Owner, as defined herein, for which the Project shall be undertaken.
- 1.3 BID - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.4 BIDDER - Any person, firm or corporation submitting a Bid for the Work.
- 1.5 BOND - Bid, Performance and Payment Bond(s) and other instruments of security, furnished by the Contractor and its Surety in accordance with the Contract Documents.
- 1.6 CHANGE ORDER - A written order to the Contractor authorizing an addition, deletion or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Price or Contract Time.
- 1.7 COMPLETION - That date, as certified by the Engineer, when the construction of the Project (and all parts thereof) is fully completed in accordance with the Contract Documents, including but not limited to the satisfactory fulfillment of, in the opinion of the Engineer, all punch list items, correction of any defective Work, start-up and

training, testing of equipment, submission and approval of operations and maintenance manuals and record drawings. Should the Contractor not achieve Completion within the specified time, or extension of time granted by the Owner, then the provisions of Liquidated Damages shall apply.

- 1.8 CONTRACT – The Contract Documents form the Contract for construction. The Contract represents the entire and integrated agreement between the Owner and the Contractor and supersedes prior negotiations, representations or agreements, either written or oral.
- 1.09 CONTRACT DOCUMENTS – The term, Contract Documents, is defined in the Form for Agreement.
- 1.10 CONTRACT PRICE - The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
- 1.11 CONTRACT TIME - The number of calendar days, and/or in combination with working days, stated in the Contract Documents to achieve Completion of the Work.
- 1.12 CONTRACTOR - The person, firm or corporation with whom the Owner has executed the Contract.
- 1.13 DRAWINGS - The part of the Contract Documents that shows the characteristics and scope of the Work to be performed and which have been prepared or approved by the Engineer.
- 1.14 DESIGNATED AGENT – The authorized representative (s) of the Owner or Licensed Site Professional (LSP)
- 1.15 ENGINEER - The person, firm or corporation named as such in the Contract Documents.
- 1.16 FIELD ORDER - A written order affecting a change in the Work, not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by the Engineer to the Contractor during construction.
- 1.17 LIQUIDATED DAMAGES – The sum of monies due the Owner from the Contractor for the Owners costs incurred because of the Contractor's default for failure to achieve Substantial Completion or Completion of the Work within the specified time(s) or extension of time(s) granted by the Owner, as specified in the Contract Documents.
- 1.18 NOTICE OF AWARD - The written notice of the acceptance of the Bid by the Owner to the successful Bidder.
- 1.19 NOTICE TO PROCEED - Written communication issued by the Owner to the Contractor authorizing the Contractor to proceed with the Work and establishing the dates of commencement and completion of the Work.
- 1.20 OWNER - A public or quasi-public body or authority, corporation, association, partnership, or individual for whom the Work is to be performed.
- 1.21 PROJECT - The undertaking to be performed as provided in the Contract Documents.

- 1.22 RESIDENT PROJECT REPRESENTATIVE - The authorized representative of the Engineer at the Project Site who is assigned to the Project Sites or any part thereof.
- 1.23 SHOP DRAWINGS - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, manufacturer, Supplier or distributor, which illustrate how specific portions of the Work shall be fabricated and/or installed.
- 1.24 SPECIFICATIONS - The part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- 1.25 STATE - The State in which the Work under this Contract is to be performed.
- 1.26 SUBCONTRACTOR - A person, firm or corporation having a direct contract with the Contractor, or with any other Subcontractor, for the performance of a part of the Work.
- 1.27 SUBSTANTIAL COMPLETION - That date, as certified by the Engineer, when the construction of the Project, or a specified part thereof, is sufficiently completed in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it is intended.
- 1.28 SUPPLEMENTAL GENERAL CONDITIONS - Modifications to General Conditions required by an entity having a jurisdiction over or for participation, whether financially or otherwise, in the Project and approved by the entity in writing prior to inclusion in the Contract Documents, or such requirements that may be imposed by the Owner, the Engineer or applicable federal, state and local laws, regulations and/or agency guidelines.
- 1.29 SUPPLIER - Any person or organization who supplies materials or equipment to be incorporated with the Work, including that fabricated to a special design, but who does not perform labor at the site(s).
- 1.30 WORK - All labor, materials and equipment incorporated or to be incorporated in the Project required by the Contract Documents.
- 1.31 WRITTEN NOTICE - Any notice to any party of the Contract relative to any part of the Work of the Contract Documents in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at its last given address or delivered in person to said party or its authorized representative. Whenever the words "as directed", "as permitted", "as required", or words of like effect are used, it shall be understood that the direction, permission or requirements of the Engineer is intended; and similarly, the words "approved", "acceptable", "satisfactory", or words of like import, shall mean approved or acceptable or satisfactory to the Engineer. Whenever the words "or equal", or words of like import are used, it shall be understood that this means equal in accordance with the following provisions: an item shall be considered equal, if in the opinion of the Engineer (1) it is at least equal in quality, durability, appearance, strength and design; (2) it will perform at least equally the function imposed by the general design for the Work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item. Whenever any power is possessed by, or act or thing is to be done by the Owner under this Contract, the exercise of such power or the doing of such act or thing by the Awarding Authority shall be a sufficient compliance with the terms of this Contract unless by law some other officer of the Owner is

required to act in the premises. Both the address given in the Bid upon which this Contract is founded and the Contractor's office at or near the site(s) of the Work are hereby designated as places to either of which notices, letters, and any other communications to the Contractor shall be certified mailed or delivered. The delivering to the above-named place(s), or depositing in a post-paid wrapper directed to the first named place, in any post office box regularly maintained by the United States Postal Service, of any notice, letter or other communications to the Contractor, shall be deemed sufficient service thereof upon the Contractor, and the date of said service shall be the date of such delivery or mailing. The first named address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor and delivered to the Engineer. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter or other communication upon the Contractor personally.

## 2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

- 2.1 The Contractor may be furnished additional instructions and detail Drawings, by the Engineer, as necessary to carry out the Work required by the Contract Documents.
- 2.2 The additional Drawings and instructions thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional detail Drawings and instructions.

## 3. SCHEDULES, REPORTS, AND RECORDS

- 3.1 Within ten (10) days after the Work has commenced, the Contractor shall submit to the Engineer for approval a progress schedule in satisfactory form, showing in detail its proposed progress for the construction of the various parts of the Work and the proposed times for receiving the various materials required. The Contractor shall, at the end of each month, or more often, if required, furnish the Engineer two (2) copies of a chart showing actual progress of the various parts of the Work in comparison with the originally proposed progress schedule, as approved.
- 3.2 The Contractor shall submit a schedule of payments that it anticipates it will earn during the course of the Work.
- 3.3 The Work is to commence within ten (10) days after a date to be specified in the Notice to Proceed unless otherwise specified. Work shall continue with dispatch to Completion and no suspension of Work will be allowed without written approval of the Engineer.
- 3.4 No Saturday, Sunday, holiday, or work day longer than eight (8) hours Work, requiring the presence of the Engineer or Resident Project Representative, will be permitted without prior arrangements with the Engineer, except in the case of an emergency, and then only to the extent that is absolutely necessary, and, if practical, with the written permission of the Engineer. If Saturday, Sunday, holiday or work day longer than eight (8) hours Work is contemplated, the Contractor shall notify the Engineer not later than Friday of the previous week to allow arrangements to be made for observation and any other services required by the Owner. If the Contractor must work beyond the regular work week in order to complete the Project within the Contract Time, all expenses of the Engineer and its personnel required for observation and any other extra expenses incurred by the Owner for such Work will be deducted monthly from any sums due or which will become due to the Contractor.

- 3.5 Prior to commencing any Work at the site(s) requiring the presence of the Engineer or its representative, the Contractor shall notify the Engineer in writing at least twenty-four (24) hours in advance of the exact date and time on which it intends to start the Work. In the event that the Contractor fails to meet this Schedule, the Engineer's on-site time will be assessed to the Contractor and will be deducted from any sums due or which will become due the Contractor.

#### 4. DRAWINGS AND SPECIFICATIONS

- 4.1 The intent of the Drawings and Specifications is to require that the Contractor shall furnish all labor, materials, tools, equipment, and transportation necessary for proper execution of the Work in accordance with the Contract Documents and all incidental Work necessary to complete the Project in an acceptable manner, ready for use, occupancy or operation by the Owner. Any Work shown on the Drawings, though not mentioned in the Specifications, and any Work mentioned in the Specifications, though not shown on the Drawings, is to be executed by the Contractor as a part of the Work.
- 4.2 In case of a conflict between the Drawings and Specifications, the Specifications shall govern. Figure dimensions on Drawings shall govern over scaled dimensions, and detail Drawings govern over general Drawings.
- 4.3 Any discrepancies found between the Drawings and Specifications and site conditions, or any inconsistencies or ambiguities in the Drawings or Specifications, shall be immediately reported to the Engineer, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.
- 4.4 Where compliance with two (2) or more industry standards or sets of requirements is indicated, and overlapping of those different standards or requirements establishes two (2) different or conflicting minimums or levels of quality, or quantity, the most stringent requirement (which is generally recognized to be, also, the most costly) is intended and will be enforced, unless specifically detailed language written into the Contract Documents (not by way of reference to an industry standard) clearly indicates that the less stringent requirement is to be fulfilled. Refer apparently-equal-but-different requirements, and uncertainties as to which levels of quality or quantity is the more stringent, to the Engineer for a written decision before proceeding.

#### 5. SHOP DRAWINGS

- 5.1 The Contractor shall provide Shop Drawings, as may be necessary for prosecution of the Work, as required by the Contract Documents. The Engineer shall promptly review all Shop Drawings. The Engineer's approval of any Shop Drawing shall not release the Contractor from its responsibility for deviations from the Contract Documents. A Change Order shall evidence the approval of any Shop Drawings, which substantially deviates from the requirements of the Contract Documents.
- 5.2 When submitted for the Engineer's review, Shop Drawings shall bear the Contractor's certification that it has reviewed, checked and approved the Shop Drawings and that they are in conformance with the requirements of the Contract Documents.
- 5.3 Portions of the Work requiring a Shop Drawing or sample submission shall not begin until the Engineer has approved the Shop Drawing or submission. A copy of each

approved Shop Drawing and each approved sample shall be kept in good order by the Contractor at the site(s) and shall be available to the Engineer.

- 5.4 The Contractor shall submit to the Engineer, before any shop work is commenced, four (4) to seven (7) prints [four (4) prints are to be used by the Engineer and up to three (3) prints are to be used by the Contractor] of Shop Drawings for all items so stated in the Specifications as requiring Shop Drawings. Additional prints for regulatory agencies shall be submitted when indicated in the Specifications. Standard forms for processing Shop Drawings will be used by the Contractor and furnished to the Contractor by the Engineer.
- 5.4.1 No Shop Drawings shall be submitted directly by Subcontractors or Suppliers. All Shop Drawings shall be submitted through the Contractor who shall check and verify all field dimensions, check for compliance with the Contract Documents, stamp and endorse all Shop Drawings to indicate its approval and compliance with the above, and assign a transmittal number to each submission. Numbers shall be assigned in sequence. In the event that a Shop Drawing is returned marked "Amend and Resubmit" or "Rejected", subsequent resubmittals for the same item shall retain the same transmittal number, but shall have an alphabetical suffix (3a, 3b, etc.). At the time of each submission, the Contractor shall in writing call the Engineer's attention to any deviations to the Contract Documents.
- 5.4.2 No portion of the Work requiring a Shop Drawing shall be commenced until the Shop Drawing has been reviewed by the Engineer. If the first submittal of the Shop Drawing is marked "No Exceptions Taken", "Make Corrections Noted" or "No Action/No Review", up to three (3) prints will be returned to the Contractor and fabrication of the item may begin. If the Shop Drawings are marked "Amend and Resubmit" or "Rejected - See Remarks", up to two (2) prints will be returned to the Contractor with notations thereon of corrections required. The Contractor shall cause the necessary corrections to be made and shall resubmit [four (4) to seven (7) prints (four (4) prints for the Engineer and up to three (3) prints for the Contractor] with transmittal numbers and letters, as defined above. If subsequent resubmittals are still not acceptable, resubmittals shall be made under the procedure outlined above until final acceptance is received.
- 5.4.3 The Engineer will review Shop Drawings with reasonable promptness, but its review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents. The acceptance of the separate item, as such, will not indicate acceptance of the assembly in which the item functions. The Contractor shall make any corrections required by the Engineer and shall return the required number of corrected copies. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections called for by the Engineer on previous submissions.
- 5.4.4 The Engineer's review of Shop Drawings shall not relieve the Contractor from its responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has in writing called the Engineer's attention to such deviations at the time of submission and the Engineer has given written acceptance to the specific deviation, nor shall any acceptance by the Engineer relieve the Contractor from responsibility for errors or omissions in the Shop Drawings. The final acceptance of Shop Drawings by the Engineer shall not

operate to relieve the Contractor in any way of its responsibility under this Contract for the satisfactory Completion of the Work, or for the accuracy of the dimensions, details, and quantities or for its Contract. No change shall be made in the accepted Shop Drawings without written consent of the Engineer. The Contract Price shall include the cost of furnishing all Shop Drawings, and the Contractor shall be allowed no extra compensation therefor.

- 5.5 The Contractor shall submit to the Engineer for review, with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples shall be checked by and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers, the use for which intended, and the section number and paragraph of the Specification wherein the material is specified. All samples shall be shipped post and/or freight paid.
  - 5.5.1 At the time of each submission, the Contractor shall in writing, call the Engineer's attention to the deviations that the samples may have from the requirements of the Contract Documents.
  - 5.5.2 The Engineer will review with reasonable promptness submitted samples, but its review shall be only for conformance with the information given in the Contract Documents. The acceptance of a separate item as such will not indicate acceptance of the assembly in which the item functions. In the event samples are not accepted, the Contractor shall resubmit new samples until acceptance is obtained.
  - 5.5.3 No Work requiring sample submission shall be commenced until the Engineer has accepted the submission in writing.
  - 5.5.4 The Engineer's acceptance of sample(s) shall not relieve the Contractor from its responsibility for any deviations from the requirements of the Contract Documents unless the Contractor has in writing called the Engineer's attention to such deviations at the time of submission and the Engineer has given written acceptance of the specific deviations.

## 6. MATERIALS, SERVICES AND FACILITIES

- 6.1 It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all labor, materials, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the Contract Time.
- 6.2 Materials and equipment shall be so stored as to insure the preservation of its quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection.
- 6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 6.4 Materials, supplies, and equipment shall be in accordance with samples submitted by the Contractor and approved by the Engineer.

- 6.5 Materials, supplies, or equipment to be incorporated into the Work shall not be purchased by the Contractor or the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.
- 6.6 All materials are to be new, unused and the best and of finest quality of their several kinds. The Contractor shall provide facilities and handle all materials as required for the inspection by the Engineer. Materials which have not been accepted by the Engineer shall be removed from the site(s) of the Work together with all surplus earth and materials which are unsuitable or not in conformity with the Contract Documents. Disposal of materials shall be without expense to the Owner. The Contractor shall promptly replace any materials rejected or condemned, and shall not be allowed extra time for Completion of the Work by reason of such rejection.

## 7. INSPECTION AND TESTING

- 7.1 All materials and equipment in the construction of the Project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents.
- 7.2 The Owner shall provide all inspection and testing services not required by the Contract Documents.
- 7.3 The Contractor shall provide at its expense the testing and inspection services required by the Contract Documents.
- 7.4 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the Contractor, the Contractor will give the Engineer timely notice of readiness. The Contractor will then furnish the Engineer the required certificates of inspection, testing or approval.
- 7.5 Inspections, tests or approvals by the Engineer, LSP or others shall not relieve the Contractor from the obligation to perform the Work in accordance with the requirements of the Contract Documents. Should inspections or tests reveal defective Work, the defective Work shall be made good and unsuitable materials shall be rejected, notwithstanding that such Work and materials have been previously overlooked and accepted or estimated for payment. If the Work or any part thereof shall be found defective at any time before the final acceptance of the whole Work, the Contractor shall forthwith make good such defect in a manner satisfactory to the Engineer. Nothing in this Contract shall be construed as vesting in the Contractor any right or property in the materials used after they have been attached or affixed to the Work or the soil, but all such materials shall, upon being so attached or affixed, become the property of the Owner.
- 7.6 All portions of the Work condemned by the Engineer, as failing to conform to the Contract Documents, shall be taken down and removed, and the Contractor shall promptly replace and re-execute the same in accordance therewith and without expense to the Owner and bear the expense of making good all Work or property of other contractors or of the Owner destroyed or damaged by such removal or replacement.
- 7.7 The Engineer and its representatives will at all times have access to the Work. In addition, authorized representatives and agents of any participating federal or State agency shall be permitted to inspect all Work, materials, payroll records of personnel,



invoices of materials, and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the Work and, also, for any inspection or testing thereof.

- 7.8 If any Work is covered contrary to the written instructions of the Engineer, it must, if requested by the Engineer, be uncovered for its observation and replaced at the Contractor's expense.
- 7.9 If the Engineer considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor at the Engineer's request, will uncover, expose, or otherwise make available for observation, inspection or testing, as the Engineer may require, that portion of the Work in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such Work is defective, the Contractor will bear all expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction. If, however, such Work is found not to be defective, the Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributed to such uncovering, exposure, observation, inspection, testing and reconstruction; and an appropriate Change Order shall be issued.

## 8. SUBSTITUTIONS

- 8.1 Whenever a material, article or piece of equipment is identified on the Drawings or Specifications by reference to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered.
- 8.2 The Contractor may recommend the substitution of a material, article or piece of equipment of equal substance and function for those referred to in the Contract Documents by reference to brand name or catalog number; and, if, in the opinion of the Engineer, such material, article or piece of equipment is of equal substance and function to that specified, the Engineer may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the Contract Price and the Contract Documents shall be modified by Change Order. The Contractor warrants that, if substitutes are approved, no major changes in the function or general design of the Project will result. Incidental changes or extra component parts required to accommodate the substitution will be made by the Contractor without a change in Contract Price or Contract Time.

## 9. PATENTS

- 9.1 The Contractor shall pay all applicable royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for any such loss when a particular process, design or the product of a particular manufacturer or manufacturers is specified. However, if the Contractor has reason to believe that the design, process, or the product specified is an infringement of a patent, the Contractor shall be responsible for such loss unless it promptly gives such information to the Engineer.

## 10. SURVEYS, PERMITS, REGULATIONS

- 10.1 The Owner shall furnish all boundary surveys and establish all baselines for locating the principal component parts of the Work, together with a suitable number of

benchmarks adjacent to the Work, as shown in the Contract Documents. From the information provided by the Owner, unless specified in the Contract Documents, the Contractor shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations, and other working points, lines, elevations and cut sheets. The Contractor shall employ, at its expense, a competent surveyor, registered in the State wherein the Work is to be done to perform such duties.

- 10.2 The Contractor shall carefully preserve benchmarks, reference points and stakes and in case of willful or careless destruction shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.
- 10.3 Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the Contractor, unless otherwise specified. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified. The Contractor shall be solely responsible for performing any necessary acts and providing any materials required in order to comply with any and all terms and conditions set forth in any permits and licenses. If the Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify the Engineer in writing and any necessary changes shall be adjusted, as provided in Article 13 Changes in the Work.

## 11. PROTECTION OF WORK, PROPERTY, AND PERSONS

- 11.1 The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor will take all necessary precautions for the safety of, and will provide necessary protection to prevent damage, injury or loss to, all employees on the Work and other persons who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site(s), and other property at the site(s) or adjacent thereto, including trees, shrubs, lawns, walks, pavement, roadways, structures and utilities not designated for removal, relocation or replacement during the course of construction. The Contractor shall be responsible for and pay for all loss or damage to materials and property, whether such are incorporated in, or to be incorporated in, the Work. The Contractor shall also replace or restore to original condition man-made or natural improvements or other things injured or interfered with by the Contractor in carrying out the Work. Adequate weather protection of all materials and structures of this Project shall be the duty of the Contractor.
- 11.2 The Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. It will erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. It will notify owners of adjacent utilities when prosecution of the Work may affect them. The Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, or anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable, except damage or loss attributable to the fault of the Contract Documents, or to acts or omissions of the Owner or the Engineer, or anyone employed by either of them or anyone for whose acts either of them may be liable and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.

11.3 In emergencies affecting the safety of persons or the Work or property at the site(s) or adjacent thereto, the Contractor, without special instruction or authorization from the Engineer or Owner, shall act to prevent threatened damage, injury or loss. The Contractor will give the Engineer prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby, and a Change Order shall be issued covering the changes and deviations involved.

#### 11.4 HAZARDOUS MATERIAL

11.4.1. If at any time during construction the presence of unanticipated hazardous materials at or proximate to a construction site(s) is detected, the Contractor shall stop Work in the affected area and perform the following immediately:

- a. Notify the Owner in writing.
- b. Take all action necessary and appropriate for the protection and safety of the public and persons at or about the site(s), including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- c. Notify the respective State agency responsible for hazardous waste and receive instructions as to the appropriate measures to be taken while working in that area.
- d. Notify the designated representative of the respective State agency having financial, license or permit and/or technical jurisdiction for this Project, or other appropriate State program director/administrator in writing mailed within 48 hours following discovery of the suspected hazardous materials.
- e. Notify the local hazardous waste coordinator.

11.4.2. Actions at the construction site(s) following completion of these steps shall be at the direction of the State agency responsible for hazardous waste. Nothing in this Article shall be construed to require the Engineer and/or the Contractor to perform Work for which adequate compensation has not been contracted for other than to insure that basic measures necessary to protect the health and welfare of workers, residents and abutters are immediately adopted.

11.4.3. At the construction site(s) where the presence of contaminated or hazardous materials are suspected to exist, and provisions have been made in the Contract Documents for their management, the requirements of Paragraph 11.4.1 of this Article shall apply.

#### 12. SUPERVISION BY CONTRACTOR

12.1 The Contractor will supervise and direct the Work. The Contractor will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain on the Work a qualified supervisor or superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site(s). The supervisor/superintendent shall have full authority to act on behalf of the Contractor, and all communications given to the supervisor/superintendent shall be as binding as if

given to the Contractor. The supervisor/superintendent shall be present on the site(s) at all times, as required, to perform adequate supervision and coordination of the Work.

- 12.2 The Contractor shall employ only competent workers; and, whenever the Engineer shall notify the Contractor in writing that any person on the Work is, in its opinion, incompetent, unfaithful, disorderly or otherwise unsatisfactory or not employed in accordance with the provisions of this Contract, such person shall be discharged from the Work and shall not again be employed on it except with the consent of the Engineer.

### 13. CHANGES IN THE WORK

- 13.1 The Owner may at any time, as the need arises, order changes within the scope of the Work without invalidating the Contract. If such changes increase or decrease the amount due under the Contract Documents, or in the time required for performance of the Work, a Change Order shall authorize an equitable adjustment. The Owner must confirm in writing any explanation or interpretation of Drawings or Specifications altering or varying the Work, made by an employee of the Owner, before such changed Work is acted upon by the Contractor.
- 13.2 The Engineer or LSP, also, may at any time by issuing a Field Order make changes in the details of the Work. The Contractor shall proceed with the performance of any changes in the Work so ordered by the Engineer or LSP, unless the Contractor believes that such Field Order entitles the Contractor to a change in the Contract Price, or time, or both, in which event the Contractor shall give the Engineer or LSP written notice thereof within seven (7) days after receipt of the ordered change. Thereafter, the Contractor shall document the basis for the change in Contract Price or time within thirty (30) days. The Contractor shall not execute such changes pending receipt of an executed Change Order or further instruction from the Owner.

### 14. CHANGES IN CONTRACT PRICE

- 14.1 The Contract Price may be changed only by a Change Order. The value of any Work covered by a Change Order, or of any claim for increase or decrease in the Contract Price, shall be determined by one (1) or more of the following methods in order of precedence listed below:
- (a) Unit prices previously approved.
  - (b) An agreed lump sum.
  - (c) The actual cost for labor, direct overhead, materials, supplies, equipment and other services necessary to complete the Work, computed as follows:
    - (1) The reasonable cost of labor employed directly on the Work at prevailing rates of wages.
    - (2) The cost of Worker's Compensation Insurance, Federal Social Security and State Unemployment Compensation on Item (1) at established rates.
    - (3) The reasonable cost of materials incorporated in the Work.
    - (4) The reasonable cost at fair market rental rates for equipment employed directly on the Work.

- (5) Fifteen (15) percent of Items (1), (2), (3) and (4) for overhead, superintendence and profit. On subcontract Work, this fifteen (15) percent will be allowed only to the Subcontractor.
- (6) An additional five (5) percent of Items (1), (2), (3) and (4) on Work performed by a Subcontractor of the Contractor. This five (5) percent includes overhead, superintendence, profit and bonds.

## 15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- 15.1 The date of commencement and the time for Substantial Completion and Completion of the Work are essential conditions of the Contract Documents, and the Work embraced shall be commenced on a date specified in the Notice to Proceed.
- 15.2 The Contractor will proceed with the Work at such rate of progress to insure both Substantial Completion and full Completion within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time allowed to achieve Substantial Completion and the Contract Time for Completion of the Work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Work.
- 15.3 If the Contractor shall fail to achieve Substantial Completion or Completion within the specified time(s) or extension of time(s) granted by the Owner, then the Contractor will pay to the Owner the amount for Liquidated Damages, as specified in the Contract Documents, for each calendar day and/or working day that the Contractor shall be in default after the time(s) stipulated.
- 15.4 The Contractor shall not be charged with Liquidated Damages or any excess cost, when the delay in Completion of the Work is due to the following, and the Contractor has promptly given written notice of such delay to the Owner or Engineer:
  - 15.4.1 To any preference, priority or allocation order duly issued by the Owner;
  - 15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and
  - 15.4.3 To any delays of Subcontractors occasioned by any of the causes specified in Paragraphs 15.4.1 and 15.4.2 of this Article.

## 16. CORRECTION OF WORK

- 16.1 The Contractor shall promptly remove from the premises all Work rejected by the Engineer for failure to comply with the Contract Documents, whether incorporated in the construction or not; and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Owner. The Contractor shall bear the expense of making good all Work of other contractors by such removal and replacement of all destroyed or damaged Work.

- 16.2 All removal and replacement Work shall be done at the Contractor's expense. If the Contractor does not take action to remove and replace such rejected Work within five (5) days after receipt of written notice, the Owner may remove such Work and store the materials at the expense of the Contractor.

## 17. SUBSURFACE CONDITIONS

- 17.1 The Contractor shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the Owner by written notice of:

17.1.1 Subsurface or latent physical conditions at the site(s) differing materially from those indicated in the Contract Documents, or

17.1.2 Unknown physical conditions at the site(s) of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the Contract Documents.

- 17.2 The Owner shall promptly investigate the conditions; and, if it finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the Work, an equitable adjustment shall be made and the Contract Documents shall be modified by a Change Order. Any claim of the Contractor for adjustment hereunder shall not be allowed unless the Contractor has given the required written notice, provided that the Owner may, if the Contractor determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

## 18. SUSPENSION OF WORK, TERMINATION AND DELAY

- 18.1 The Owner may suspend the Work, or any portion thereof, for a period of not more than ninety (90) calendar days or such further time, as agreed upon by the Contractor, by written notice to the Contractor and the Engineer, which notice shall fix the date on which the Work shall be resumed. The Contractor will resume that Work on the date so fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension.

- 18.2 If the Contractor is adjudged bankrupt or insolvent, or if the Contractor makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property, or if the Contractor files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or other applicable laws, or if the Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if the Contractor repeatedly fails to make prompt payments to Subcontractors or for labor, materials, or equipment, or if the Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the Work, or if the Contractor disregards the authority of the Engineer, or if the Contractor otherwise violates any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and its surety a minimum of ten (10) days from delivery of a written notice, terminate the services of the Contractor and take possession of the Project and of all materials, tools, equipment, construction equipment and machinery thereon owned by the Contractor, and finish the Work by whatever method it may deem expedient.

- 18.3 In such case the Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the direct and

indirect costs of completing the Project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Engineer and incorporated in a Change Order.

- 18.4 Where the Contractor's services have been so terminated by the Owner, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the Contract Documents.
- 18.5 After ten (10) days from delivery of a written notice to the Contractor and the Engineer, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Contract. In such case, the Contractor shall be paid for all Work satisfactorily executed and any expense sustained plus reasonable profit.
- 18.6 If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) calendar days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any request for payment within thirty (30) days after it is submitted, or the Owner fails to pay the Contractor substantially the sum approved by the Engineer or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of a written notice to the Owner and the Engineer, terminate the Contract and recover from the Owner payment for all Work executed and all expenses sustained. In addition and in lieu of terminating the Contract, if the Engineer has failed to act on a request for payment or if the Owner has failed to make any payment as aforesaid, the Contractor may upon ten (10) days written notice to the Owner and the Engineer stop the Work until the Contractor has been paid all amounts then due, in which event and upon resumption of Work, a Change Order shall be issued for adjusting the Contract Price or extending the Contract Time or both to compensate for the costs and delays attributable to the stoppage of the Work.
- 18.7 If the performance of all or any portion of the Work is suspended, delayed, or interrupted, as a result of a failure of the Owner or the Engineer to act within the time specified in the Contract Documents, or if no time is specified, within a reasonable time an adjustment in the Contract Price and extension of the Contract Time, or both, shall be made by a Change Order to compensate the Contractor for the costs and delays necessarily caused by the failure of the Owner or the Engineer.

## 19. PAYMENTS TO CONTRACTOR

- 19.1 At least ten (10) days before each progress payment falls due (but not more often than once a month), the Contractor will submit to the Engineer a partial payment estimate filled out and signed by the Contractor covering the Work performed during the period covered by the partial payment estimate and supported by such data as the Engineer may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at or near the site(s), the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the Owner, as will establish the Owner's title to the material and equipment and protect its interest therein, including applicable insurance. Payments to the Contractor are governed by Massachusetts General Law, Chapter 30, Section 39G

and are recited in full in Document 00855, Special Conditions, Commonwealth of Massachusetts.

19.2 Prior to Substantial Completion, the Owner with the approval of the Engineer and with the concurrence of the Contractor may use any substantially completed portions of the Work. Such use shall not constitute an acceptance of such portions of the Work.

19.3 The Owner shall have the right to enter the premises for the purpose of doing Work not covered by the Contract Documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the Work, or the restoration of any damaged Work except such as may be caused by agents or employees of the Owner.

19.4 The Contractor will indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of Work. The Contractor shall at the Owner's request furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived.

## 20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

20.1 The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability of the Contractor other than claims in stated amounts, as may be specifically accepted by the Contractor, for all things done or furnished in connection with this Work and for every act and neglect of the Owner and others relating to or arising out of this Work. Any payment, however final or otherwise, shall not release the Contractor or its sureties from any obligations under the Contract Documents or the performance bond and payment bond.

## 21. INSURANCE

21.1 The Contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Contractor's execution of the Work, whether such execution be by itself, by any Subcontractor, by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

21.1.1 Claims under Worker's Compensation, disability benefit, and other similar employee benefit acts;

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees;

21.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any persons other than its employees;

21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (b) by any other person; and,

21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.



21.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or a restrictive amendment added, unless at least thirty (30) days prior written notice has been given to the Owner. The certificates shall name the types of policy provided, specifically state the title of this Contract and state that the Insurance coverage is as required by the General Conditions and Supplemental General Conditions.

21.3 The Contractor shall procure and maintain at its own expense during the Contract Time liability insurance, as hereinafter specified:

21.3.1 General Public Liability including Contractor's Liability as applicable to the Contractor's obligations. Completed Operations and Products Liability: all on the occurrence basis with Personal Injury coverage and Broad Form Property Damage. Products and Completed Operations shall be maintained for up to 3 years after the Completion of the Project.

Bodily Injury and Accidental Death - General Liability

Combined Single Limit/Annual Aggregate \$1,000,000/\$2,000,000

Property Damage - General Liability

Combined Single Limit/Annual Aggregate \$1,000,000/\$2,000,000

Bodily Injury - Automobile Liability (Applicable for any contractor who has an automobile operating exposure.)

Per Accident/Aggregate \$1,000,000/\$2,000,000

Property Damage - Automobile Liability (Applicable for any contractor who has an automobile operating exposure.)

Per Accident/Aggregate \$1,000,000/\$2,000,000

21.3.2 The Contractor's Public Liability Insurance shall provide, by any necessary removal of exclusions or by separate policies of the same limits, coverage for all hazards inherent in the Work of this Project. Without limiting the foregoing statement, the insurance shall cover the following hazards: Explosion, collapse and underground damage; damage to property in the Contractor's care, custody or control; rigging, hoisting and moving.

21.3.3 The Contractor shall acquire and maintain Fire and Extended Coverage Insurance upon the Project to the full insurable value thereof for the benefit of the Owner, the Contractor and Subcontractor as their interest may appear. This provision shall in no way release the Contractor or Contractor's Surety from obligations under the Contract Documents to fully complete the Project.

21.4 The Contractor shall procure and maintain at its own expense during the Contract Time, in accordance with the provisions of the laws of the State in which the Work is performed, Worker's Compensation Insurance and Employer's Liability Insurance, including occupational disease provisions for all of its employees at the site(s) of the Project; and, in case any Work is sublet, the Contractor shall require such Subcontractor similarly to provide Worker's Compensation Insurance and Employer's Liability Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any

class of employees engaged in hazardous Work under this Contract at the site(s) of the Project is not protected under Worker's Compensation statute, the Contractor shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. The limit of Employer's Liability Insurance shall not be less than required by the State of Massachusetts.

- 21.5 The Contractor is not required to acquire and maintain "Special Form" type Builders Risk Insurance for Work to be performed.
- 21.6 The Contractor shall secure and maintain Owner's Protective Liability Insurance coverage naming the Owner and the Engineer as insured with the same limits and coverages as the Contractor's General Public Liability, Property Damage Insurance. This insurance shall be in addition to the other required coverages, but shall not duplicate such coverage therein provided.
- 21.7 The Contractor shall secure and maintain Umbrella or Excess Liability Insurance in the amount of **1 Million Dollars (\$1,000,000.00)** over and above the primary limits required to be carried. The Owner shall be named as an additional insured.
- 21.8 The Contractor shall secure and maintain Property Coverage for materials and supplies being transported by the Contractor, as the Owner's Property Contract provides coverage for personal property within 1,000 feet of the premises.
- 21.9 Insurance referred to shall be written for not less than any limits of liability required by law, or those set forth above, whichever is greater.
- 21.10 The Owner reserves the right to require additional insurance coverages, higher limits or both, provided the Owner will pay the additional premium therefore.

## 22. CONTRACT SECURITY

22.1 The Contractor shall within ten (10) days after receipt of the Notice Of Award furnish the Owner with a performance bond and payment bond in penal sums equal to the amount of the Contract Price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions, and agreements of the Contract Documents and upon prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the Work provided by the Contract Documents. Such bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the State in which the Work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds", as published in the U.S. Treasury Department Circular Number 570. The expense of these bonds shall be borne by the Contractor. If at any time a surety on any such bonds is declared bankrupt or loses its right to do business in the State in which the Work is to be performed or is removed from the list of Surety Companies Acceptable on Federal Bonds, the Contractor shall, within ten (10) days substitute an acceptable bond(s) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond(s) shall be paid by the Contractor. No further payments to the Contractor shall be deemed due nor shall any be made until the new surety or sureties shall have furnished an acceptable bond(s) to the Owner.

## 23. ASSIGNMENTS

- 23.1 Neither the Contractor nor the Owner shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of its right, title or interest therein, or its obligations thereunder without written consent of the other party.

#### 24. INDEMNIFICATION

- 24.1 The Contractor will indemnify and hold harmless the Owner and the Engineer and their agents and employees from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claims, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom and is caused in whole or in part by any negligent or willful act or omission of the Contractor and Subcontractor(s), anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.
- 24.2 In any and all claims against the Owner or the Engineer, or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit acts.
- 24.3 The obligation of the Contractor under this Article shall not extend to the liability of the Engineer, its agents or employees, arising out of the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or Specifications.
- 24.4 The Contractor will indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnisher of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the Work. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived.

#### 25. SEPARATE CONTRACTS

- 25.1 The Owner reserves the right to let other contracts in connection with this Project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work, and shall promptly connect and coordinate Work with theirs. If the proper execution or results of any part of the Contractor's Work depends upon the Work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such Work that render it unsuitable for such proper execution and results.
- 25.2 The Owner may perform additional Work related to the Project or let other contracts containing provisions similar to these. The Contractor will afford the other contractors who are parties to such contracts (or the Owner, if performing the additional Work itself) reasonable opportunity for the introduction and

storage of materials and equipment, and the execution of Work, and shall properly connect and coordinate Work with theirs.

- 25.3 If the performance of additional Work by other contractors or the Owner is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to the Contractor prior to starting any such additional Work. If the Contractor believes that the performance of such additional Work by the Owner or others involves the Contractor in additional expense, or entitles the Contractor to an extension of the Contract Time, the Contractor may make a claim therefore, as provided in Articles 14 and 15.
- 25.4 The Owner shall have the right to enter the premises for the purpose of doing Work not covered by the Contract Documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the Work, or the restoration of any damaged Work, except such as may be caused by agents or employees of the Owner.

## 26. SUBCONTRACTING

- 26.1 The Contractor may utilize the services of specialty Subcontractors on those parts of the Work, which under normal contracting practices are performed, by specialty Subcontractors.
- 26.2 The Contractor shall not award Work to Subcontractor(s) in excess of fifty (50) percent of the Contract Price without prior written approval of the Owner.
- 26.3 The Contractor shall be fully responsible to the Owner for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as they are for the acts and omissions of persons directly employed by them.
- 26.4 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the Work of Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.
- 26.5 Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the Owner.

## 27. ENGINEER'S AND LSP'S AUTHORITY

27.1 The Engineer or LSP may act as the Owner's representative during the construction period. The Engineer or LSP shall decide questions that may arise as to quality and acceptability of materials furnished and Work performed. The Engineer or LSP shall interpret the intent of the Contract Documents in a fair and unbiased manner. The Engineer or LSP will make visits to the site(s) and determine if the Work is proceeding in accordance with the Contract Documents.

27.2 The Contractor will be held strictly to the intent of the Contract Documents in regard to the quality of materials, workmanship and execution of the Work. Inspections may be made at the factory or fabrication plant of the source of material supply.

27.3 The Engineer or LSP will not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety.

27.4 The Engineer or LSP shall promptly make decisions relative to interpretation of the Contract Documents.

## 28. LAND AND RIGHTS-OF-WAY

28.1 Prior to issuance of the Notice to Proceed, the Owner shall obtain all land and rights-of-way necessary for carrying out and for the Completion of the Work to be performed pursuant to the Contract Documents, unless otherwise mutually agreed.

28.2 The Owner shall provide to the Contractor information, which delineates and describes the lands owned and rights-of-way or right-of-entries acquired.

28.3 The Contractor shall provide at the Contractor's expense and without liability to the Owner any additional land and access thereto that the Contractor may desire for temporary construction facilities or for storage of materials.

## 29. GUARANTY

29.1 The Contractor shall guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of Substantial Completion. The Contractor warrants and guarantees for a period of one (1) year from the date of Substantial Completion of the system that the completed system is free from all defects due to faulty materials or workmanship; and the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or other Work that may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. The Performance Bond shall remain in full force and effect through the guarantee period.

## 30. CLAIMS AND DISPUTES

30.1 All claims, disputes and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof, except for claims that have been waived by the making and acceptance of final payment as provided by Article 20, shall be entered into a court of competent jurisdiction within the State where the Work is located.

30.2 The Contractor will carry on the Work and maintain the progress schedule during any disputes and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof, unless otherwise mutually agreed in writing.

## 31. TAXES

31.1 The Contractor is an exempt purchaser under the Massachusetts Sales Act, Chapter 14 of the Acts of 1966, to the extent that materials and supplies are used or incorporated in the performance of the Contract. The Contractor shall obtain from the Owner an exemption certificate number to be used in lieu of paying the tax on exempted items.

## 32. INTERPRETATION OF DRAWINGS AND SPECIFICATIONS

32.1 The Specifications and Drawings are intended to describe and provide for a completed Project. They are intended to be complementary, and what is called for by either shall be complete in every detail, notwithstanding that every item necessarily involved is not particularly mentioned, and the Contractor shall provide all labor and materials necessary for the entire Completion of the Work intended to be described.

## 33. SITE REGULATIONS

33.1 On or before the Completion of the Work, the Contractor shall without charge therefor tear down and remove all buildings and other temporary structures built by the Contractor, and shall remove and legally dispose of surplus material and rubbish of all kinds from any ground which it has occupied and shall leave the Work, grounds and surroundings in a clean and neat condition.

33.2 Tobacco, Drugs and Liquor Prohibited. The Contractor shall neither permit nor suffer smoking where it creates a hazard nor the introduction or use of drugs, spirituous or intoxicating liquors upon or about the Work embraced in this Contract or upon any of the ground occupied by the Contractor.

33.3 Posters. The Contractor shall not permit or suffer any placards, posters or advertisements to be displayed on or about the premises unless approved by the Owner.

## 34. LIMITATIONS OF DATA PRESENTED

34.1 Drawings, surveys, measurements, dimensions, calculations, estimates, borings and statements as to the condition under which the Work is to be performed are believed to be correct.

34.2 The Bidder shall carefully examine the Contract Documents, including all Drawings, Specifications and Addenda, shall visit the site(s) and shall satisfy itself as to the type and quantity of the Work to be performed. For the purposes of comparing several proposals, the Bid shall be based on the data presented and the Bidder's examination of the site(s).

34.3 The locations of all utilities are obtained from the best available sources and are to be considered as approximate insofar as size, location and elevation are concerned. Furthermore, it is expressly understood that there may be utilities in existence other than those shown on the Drawings.

## 35. HEALTH AND SAFETY EQUIPMENT

35.1 As provided for in Article 11, the Contractor is responsible for establishing and maintaining a health and safety program throughout the course of the Project so as to meet all Local, State, Federal and OSHA requirements.

35.2 In order for the Owner and/or Engineer and or LSP to observe the Work, the Contractor shall provide health and safety equipment for such purposes. Such equipment shall specifically include, but not necessarily be limited thereto, the following:

35.2.1 Ear plugs in sufficient quantities

35.2.2 Headset protective hearing devices

35.2.3 Safety glasses/goggles

35.2.4 3-way gas detector meter with lights and alarm (hydrogen sulfide, combustible gases and oxygen deficiency)

35.2.5 Tripod (mechanical crank type especially designed and equipped for lifting personnel in and out of confined spaces)

35.2.6 Ropes and harnesses

35.2.7 Disposable coveralls/protective clothing/gloves in sufficient quantity and sizes

35.2.8 Ventilating equipment for confined spaces

35.2.9 Self-contained breathing apparatus (SCBA)

35.3 All of the above equipment shall be continuously provided at the worksite(s) and maintained in good working order (including manufacture's recommended maintenance and calibration of the 3-way gas detector and SCBA equipment). It is understood that such equipment shall remain the property of the Contractor and is in addition to any and all health and safety equipment that the Contractor is required to have for the Contractor's health and safety program on-site.

35.4 The Contractor is advised that the Owner has clearly established on-going Confined Space and Lock-out/Tag-out programs. Where the Contractor's Work requires confined space entry into existing facilities and/or lock-out/tag-out of existing equipment and electrical controls, the Contractor shall strictly abide by the Owner's programs if they are more stringent than the Contractor's own procedures.

END OF SECTION

SECTION 00800  
SUPPLEMENTARY GENERAL CONDITIONS

1.01 Reference to Contract General Provisions

Attention is directed to the General Provisions (including the Contract Bid Forms) of the City of Amesbury of which these Specifications are hereby made a part.

1.02 Project Site

The work is as described in the Contract Specifications and Plans.

1.03 Scope of Work

The work is described below.

1.04 Work Described By

The work of this Contract is described within the following contract documents:

- A- The Invitation to Bid, General Conditions, Supplementary General Conditions, and Contract including Performance and Payment Bonds.
- B. The Technical Specifications: refer to the "Table of Contents".
- C. The Drawings.
- D. Addenda issued during the bidding period which are hereby made a part of these Specifications.

1.05 Pre-Bidding Conference

- A. A pre-bid conference for prospective bidders will be held as part of this project at the site on October 18, 2013 at 9:30 a.m.

1.06 Inspection of Site

- A. Prior to the submission of bids, each bidder shall make a thorough examination of each and- every location where work is to be performed. Failure to visit the site will in no way relieve the successful bidder from his responsibility to complete all work in accordance with the Drawings and Specifications and without additional cost to the City.
- B. The Contractor must satisfy himself by his own investigation and research, regarding conditions affecting the work to be done, the equipment, labor and materials needed, and make his bid in sole reliance thereon.

1.07 Questions During Bidding Period

- A. All questions by prospective bidders, during the bidding period, as to the interpretation of the Notice to Contractors, Form of Proposal, Form of Contract, Plans, Specifications or Form of Performance Bond and labor and material or Payment Bond must be submitted in writing to the City and must be in its possession at least ten (10) days before the date herein set for the receipt of general bids. Said



AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

City will then email and/or mail by certified mail with return receipt requested, to bidders who have taken out plans at the addresses given by them, not less than five (5) days before said date, interpretations of all questions so raised which in its opinion require interpretations. Verbal interpretations given to perspective bidders will have no standing.

- B. Written inquiries shall be submitted in duplicate and addressed to:

CITY OF AMESBURY  
OFFICE OF COMMUNITY & ECONOMIC DEVELOPMENT  
CITY HALL  
62 FRIEND STREET  
AMESBURY, MA 01913

1.08 Drawings

- A. Bidding Drawings

1. Proposal shall be based upon the bidding Drawings listed and included with the Specifications as issued to all bidders, which drawings may be notified by addenda issued by the City during the bidding period, and later will, as modified by the addenda, become the Contract Drawings.
2. Wherever existing conditions or construction not required as part of the work of the Contract are shown on the Drawings, they are so shown as a source of information to the Bidder. The City, believing such information to be substantially correct, assumes no responsibility thereof.

- B. Construction Drawings

1. The Drawings are made to scale, and unless otherwise noted, all working dimensions shall be taken from the written figured dimensions or by actual measurements at the job, but in no case by scaling. The Contractor shall study and compare all Drawings and verify all figures before laying out or constructing the work and shall be responsible for any and all errors in his work which might have been avoided thereby. Whether or not an error is believed to exist, deviations from the Drawings and the dimensions given thereon shall be made only after all measurements of existing established conditions notwithstanding the figured dimensions on the Drawings have been determined. When figured dimensions are not in agreement with the Contractor's measurements, he shall immediately notify the City.
2. If the Contractor during the progress of the work discovers any discrepancies between the Drawings and the Specification, errors or omissions on the Drawings or any discrepancies between the physical condition of the work and the Drawings, he shall immediately notify the City who shall promptly adjust the same.
3. Any work performed after the discovery of discrepancies without approval of the City shall be at the Contractor's risk and expense.
4. The Contractor shall have made himself familiar with all conditions affecting the nature and manner of performing the work and shall not be entitled to any

extra compensation for any work or expense arising from or caused by his neglect to have verified all existing conditions and requirements.

5. Where equipment and lines of piping are shown diagrammatically, the Contractor shall be responsible for the coordination and orderly arrangement of the various lines of embedded piping and conduit included in the work of this Contract. He shall coordinate the work of any Subcontractor and prevent all interferences between the equipment, lines of piping or structural and architectural features, and avoid any unsightly arrangements in exposed work.

C. Record Drawings

The Contractor shall keep at the site a record set of prints on which he shall clearly and accurately record all approved changes and/or additions to the contract work made to meet field conditions. The set of Drawings shall be used for this purpose only, and shall be delivered to the City in good condition at the completion of the work before the final payment shall be due and payable, as an accurate record of the work as actually executed.

D. Shop Drawings

1. The provisions of these paragraphs supplement Article III, Section 3, of the Printed form of Contract.
2. The Contractor shall submit six copies of all shop or setting drawings, schedules and catalog cuts, for approval. All data submitted to the City shall be rechecked and verified by the Contractor.
3. The Contractor will also submit to the City for approval, with such promptness as to cause no delay in the work, all samples required by the Contract.

All samples will have been checked and approved by the Contractor, identified clearly as to material, manufacturer, and pertinent catalog numbers and the use for which intended.

4. At the time of each submission, the Contractor shall call to the City's attention, in writing, any deviations that the shop drawings or samples may have from the requirements of the Contract.
5. The City will check and approve with reasonable promptness shop drawings and samples, but the checking and approval shall be only for conformance with the design concept of the project and for compliance with information given in the Contract. The Contractor will make any corrections required by the City and return six copies of corrected shop drawings or resubmit new samples. The approval of a separate item as such will not indicate approval of the assembly in which the item functions.
6. Work requiring a shop drawing or sample submission shall not proceed until the submission has been approved by the City.
7. The City's approval of shop drawings or samples shall not relieve the Contractor from his responsibility for any deviations from the requirements of the Contract unless the Contractor has in writing called the City's attention to

such deviations at the time of submission and the City has given written approval to the specific deviation, nor shall it relieve the Contractor from errors or omissions in the shop drawings.

#### 1.09 Sub-Surface Data

Sub-surface data, if and where applicable, is given as shown on the drawings or as an attachment to these Specifications.

#### 1.10 Equality of Products

- A The provisions of these paragraphs supplement Article IV, Section 3. of the General Provisions section of this Contract.
- B. The words "or equal" are understood:
  - 1. To follow:
    - a. The name of any maker or vendor.
    - b. Any trade name, plant or catalog number.
    - c. Any detail description which is used on the Drawings or in the Specifications to define the material, article assembly or system required.
  - 2. To mean any material, article, assembly, or system which, in the opinion of the City, is at least equal in quality, durability, appearance, strength and design to the material, article, assembly, named or described and will perform at least equally to the functions imposed by the general design, but the words, "or equal" shall not be construed to permit substantial departure from the detailed requirements of the Drawings and Specifications for any material, article, assembly or system or of any component part thereof The burden of proving equal quality shall be on the Contractor.

#### 1.11 Substitutions

- A. All substitutions of products, equipment, materials and methods described in these Specifications shall be made in consolidated requests for the trades required to complete the work. Requests for substitution will not be considered until the consolidated request has been submitted. Regardless of whether or not the phrase 'or equal' or similar notation appears in the Specifications or on Drawings, no substitutions will be allowed except upon written request from the Contractor and written approval from the City.
- B. Requests shall include, for each substitution, the following:
  - 1. A complete description of the proposed alternate material including sufficient technical data to enable the City to quickly arrive at a decision as to the suitability of the substitution.
  - 2. The reason for substitution.
  - 3. A comparison of the price of the substitution with the price of the item specified.

4. A comparison of the delivery time required for the item specified.
  5. Samples if requested by the City.
- C. No request for substitution will be considered after approval of the consolidated request except by written emergency request made because of non-availability of the specified material, delay of delivery, or to adjust to unforeseen field conditions. This written emergency request for substitution shall be accompanied with a photocopy of a letter from the supplier or manufacturer stating that he is unable to furnish the specified materials and the reasons that he is unable to furnish the materials.
- D. The emergency request shall be made to the City at the job site and shall be made as soon as the difficulty is known so that the City shall have sufficient time to appraise the substitution. If the Contractor's proposed substitution in the emergency request is declined, the City shall have the privilege of specifying a different substitute which has a price that does not markedly exceed the price of the item in these Specifications.
- E. The City's decision on approval or disapproval shall be binding subject to the Contract General Conditions.
- F. The Contractor shall have provided in his proposal for furnishing the specified items named or described in these Specifications or on the Drawings and, if substitutions are declined by the City, shall be prepared to provide the specified items at the proper time necessary to complete the contract work as scheduled. Submittal of the bid by the Contractor shall be representation that the proposal price included the specified items and that he is able to supply the specified items.
- G. The Contractor shall not be entitled to additional compensation for cost of extra work resulting from any substitutions requested by him. If the cost of the material substituted is less than the cost of the material specified, such savings in cost shall be credited to the City and deducted from the contract price.

#### 1.12 Control of Materials

- A. Source of Supply and Quality
1. Where no inspection of materials is arranged for by the City and before such materials are incorporated into the work, the Contractor will be required to submit to the City for approval, three copies of the Manufacturer's or Supplier's statement for each kind of material furnished, which shall contain the following information:
    - a. Project to which the material is consigned.
    - b. Name of the Contractor to which the material is supplied.
    - c. Kind of material supplied.
    - d. Quantity of material represented by the certificate.
    - e. Means of identifying the consignment, such as label, marking, seal number, etc.
    - f. Date and method of shipment.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

- g. Statement to the effect that the material has been tested and found in conformance with the pertinent parts of the Contract.
- h. Results of all required tests, or in lieu of furnishing the results, a statement with the results of all required tests pertinent to the certificate, but not submitted, shall be maintained available by the undersigned for a period of not less than three years from the date of final acceptance of final payment by the City.
- i. Signature of a person having legal authority to bind the supplier.

B. Samples and Tests

- 1. The inspection and sampling of materials will be carried out, ordinarily, at the site of the contract work. The City will not assume any obligation for the inspection and sampling of materials at source. The responsibility of incorporating satisfactory material in the work rests entirely with the Contractor, notwithstanding any prior inspection or test. Mix designs for bituminous concrete and cement concrete shall be submitted, no less than 14 days in advance of proposed use of these materials, for approval by the City or its agent.
- 2. Tests of materials will be made by the City or under its direction. The Contractor or his suppliers shall furnish such facilities as the City may require for collecting and forwarding samples and shall not make use of, nor incorporate into the work, any material represented by the samples until the required tests have been made and the material accepted, unless otherwise directed. The Contractor in all cases shall furnish the required samples without charge. In the event of failure of materials to meet Specifications, any retesting of new materials or of the same materials after reworking, shall be paid for by the Contractor.
- 3. Material such as crushed stone, gravel borrow, ordinary borrow, etc. will be sampled at the source and approved for use by the City.
- 4. However, such preliminary approval by the City does not relieve the Contractor of the responsibility for placing satisfactory material in the work as determined by subsequent samples taken at the source or on the project prior to the material being incorporated into the work and if the project samples test satisfactorily, the material will be considered to meet the contract requirements as to quality. If such sampling and testing reveal that the material is unsatisfactory, it will then be the responsibility of the Contractor to remove it.

C. Delivery and Storage of Materials

- 1. Materials shall be so stored as to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection.
- 2. Private property shall not be used for storage purpose without written permission of the owner or lessee, and if requested by the City copies of such written permission shall be furnished by him.

3. All storage sites shall be restored to their original condition by the Contractor at his expense. This shall not apply to the stripping and storing of topsoil, or to other materials salvaged from the work.

D. Scheduling of Designated Sources of Materials

1. The Contractor shall designate the proposed sources of all materials in time to Permit all required testing and inspection before the material is needed to be incorporated into the work. The Contractor shall have no claims because of his failure to designate the proposed source of the material in time for adequate testing and inspection.
2. Necessary arrangements shall be made to permit the City to make factory, shop or other inspection of materials, or equipment ordered for the work during process of manufacturer or fabrication or in storage elsewhere than the site of the work.

1.13 Disposal of Materials

No Disposal Area: Where no disposal area is shown on the Drawings the Contractor shall remove all materials off the City's property/job site to a location approved by the City. Documentation certifying proper disposal shall be submitted to the City.

1.14 Vehicle Weight Limits

- A. The Contractor's attention is directed to Chapter 90, Section 19A of the General Laws as amended concerning the weight limits for construction type motor vehicles.
- B. No materials supplied for the project shall be accepted in vehicles whose gross weight exceed the legal load limits as determined by the regulatory agencies of the City and Federal Government.
- C. Weight slips that indicate the load exceeding the legal load limit will not be countersigned by the City.

1.15 Construction Progress Schedule

- A. The provisions of these paragraphs supplement Article V, Section 1 b of the General Provisions section of this contract.
- B. The Contractor shall submit to the City, his information, a schedule of his proposed operations within seven (7) calendar days of receipt of the Notice to Proceed.
- C. The City will schedule and administer a preconstruction meeting, periodic progress meetings and specially called meetings throughout the progress of the work. The Contractor shall attend said meetings to ascertain that all work is expedited consistent with the contract documents and construction schedules. The time and location of such meetings will be designated by the City. The Contractor must attend the preconstruction meetings and all periodic progress and specially called meetings throughout the progress of the work. Representatives of the Contractor, Subcontractors and major suppliers attending said meeting shall be qualified and authorized to act on behalf of the entity each represents.

- D. During the progress of the work, the Contractor may be required at certain times, to submit to the City, weekly, or bi-weekly schedules, showing the anticipated activity during that time frame, in the event that project completion time constraints are not being accomplished as determined by the City. The Contractor shall continuously update the schedules in a manner to bring the project within anticipated time frames. The procedure and extent of the schedules will be determined by the City.
- E. Whenever, in the opinion of the City, the work is not proceeding in accordance with the approved schedule of operations, the Contractor, shall promptly take such measures as are necessary to return the work to the proper schedule, directed by and, at no additional cost to the City. Such measures shall include, but not be limited to employing additional or different personnel, equipment or construction methods, employing additional shifts, or working overtime. Such measures shall be continued until compliance with the schedule of operations has been obtained.
- F. If the project involves dredging and is not completed within the designated dredging period set forth by the Environmental Regulatory agencies, the Contractor will be required to complete the dredging in the next permitted dredge period. No additional compensation will be paid for mobilization and demobilization.

#### 1.16 Project Sign

- A. The Contractor shall furnish and erect at a suitable location, approved by the City, at the start of the work, a sign having dimensions of at least five (5) feet long by three (3) feet high identifying the project. The City shall provide wording to the contractor.
- B. The Contractor shall reference the typical sign layout enclosed to be followed for this project. The project title, contract number, contract location will be reflect this specific project. The City will approve the sign layout draft prior to fabricating the sign.

#### 1.17 Contractor's General Responsibilities

- A. In performance of the Contract and insofar as his employees are concerned, the Contractor shall be responsible, in addition to item specified elsewhere in the Contract, for the Safety of his own crew and equipment whether inside or outside of the construction area.
- B. Permits
  - 1. The Contractor is responsible for securing and paying for prior to the start of the related work, all permits required for the execution of the work of this Contract, including but not limited to building construction related permits including specific trade and road cut permits. All work found to be not in conformance with permits or these Specifications, shall be removed and replaced at the expense of the Contractor.
  - 2. All permits secured by the Contractor, complete with the application and orders of conditions, shall be kept on file in the Contractor's office and field office with copies submitted to the City.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

- C. Protection of the construction site and all adjoining premises or property from all damage until the work has been accepted by the City, and making good at his own expense all damage thereto arising out of any contract operations.
- D. Strictly prohibiting and taking all necessary measures to prevent the committing of nuisances on the land of the City and adjacent properties. Access shall be maintained to any building, waterway or roadway that is connected to any work included in this Contract. The Contractor shall provide and maintain access for occupant entrance to and exit from all adjacent buildings and properties at all times.
- E. The Contractor shall construct for the protection of the construction area and the public: suitable barricades, barrier fences, traffic signs, temporary lighting, bridges, illuminating traffic signs and other traffic devices as directed by the City conforming with the manual on Uniform Traffic Control Devices for streets and highways published by the Bureau of Public Roads, also by a sufficient number of watchmen at all times, and/or as directed by the City. Traffic devices and signs shall be located as required and/or directed by the City
- F. Construction activity shall be staged to minimize interference with the public travel ways, park operations and adjacent areas. Access shall be maintained to any building, waterway or roadway that is connected to any work included in this Contract.
- G. The Contractor shall at his expense protect existing structures, shall provide lights and fences and take all other precautions that may be necessary to protect life and property. He shall carry on all operations and use equipment of such types that all noise resulting from construction operations will be kept to a minimum. All temporary facilities required for the general protection of the public and the -work shall be substantial in character, neat in appearance and subject to approval of the City.

1.18 Photographs

- A. The Contractor shall furnish the City suitable 4" X 6" (or 8" X 10" at the discretion of the City) color photographs and digital photos on CD of the construction area, including all dredging and disposal areas, where applicable.
- B. One view will be required of the construction site for each specific construction activity area as determined by the City, and shall be taken as follows:
  - 1. Before construction operations have been started;
  - 2. Monthly progress;
  - 3. After construction has been completed;
- C. The areas to be photographed and the locational reference point from which they are to be taken will be designated by the City.
- D. Each photograph shall have permanently written on its face a legible description or title indicating date, location, direction from which taken, project title and item of work photographed.
- E. Upon completion of all work under this contract, The Contractor shall deliver all negatives, clearly identified, to the City Photographs will be placed in acetate sleeves and bound in three booklet form.



- F. The cost of furnishing photographs shall be included in the prices bid for the various items scheduled in the Proposal.

#### 1.19 Contractor's Yard

- A. Where no yard is shown on the Drawings, the Contractor may request a location, such request and location shall be subject to the approval of the City.
- B. Maintenance and security of the area, materials, and equipment within it shall be the responsibility of the Contractor.
- C. The cost of the above paragraphs shall be included in the contract price and no direct or separate payment will be made to the Contractor.

#### 1.20 Temporary Facilities for the City

Temporary facilities and/or equipment as noted on the drawings shall be made available to the City no later than 5 days after the commencement of work, and until City Project acceptance.

#### 1.21 Security

The General Contractor shall be wholly responsible for patrolling and protecting the work under construction and the materials on the site, and the existing work. The General Contractor shall have full responsibility for the security of the property and the City's materials stored or otherwise located upon the site, and shall reimburse the City for any loss, damage, or injury to such materials, except as may be directly caused by the City, its agents or its employees.

#### 1.22 Cooperation with Others

The Contractor shall coordinate his work with that of Subcontractors, if any are, working on the project, and allow them all necessary access to the construction areas, so as to facilitate the progress of the work. The Contractor shall coordinate the work of all trades to complete the work within the time required. Each trade shall afford all other trades every reasonable opportunity for installation of their work and for storage of material. The Contractor should note that other separate contracts and/or Contractors may be working on, near, or in conjunction with work covered by this Contract. Each Contractor shall conduct his work so as not to interfere with or hinder the progress or completion of the work being performed by other Contract and/or Contractors.

#### 1.23 Workmanship

All workmanship necessary to complete the work required by these specifications shall be of the highest quality. The Contractor shall, at all times employ workmen in sufficient number and of the various degrees of skill and experience required to perform satisfactorily the work of these specifications in accordance with the best modern standard practice. The Contractor shall bear the entire expense and no separate or direct payment shall be made as a result of extra work which may be necessary because of inferior workmanship, or for specific items of work which are normally considered a part of good workmanship in completing any particular phase of the work-

#### 1.24 Protection and Restoration of Property

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

- A. The Contractor shall, at his own expense, preserve and protect from injury all property either public or private along and adjacent to the proposed work. He shall be responsible for any repair, at his expense, and any and all damage or injury thereto, arising out of or in consequence of any act of omission, neglect or misconduct in the execution of the work by his employees or Subcontractors in the performance of the work covered by the Contract prior to completion and acceptance thereof. He shall exercise special care during his operations to avoid injury to underground structures such as water or gas mains, pipes, conduits, manholes, catch basins, direct buried electrical cables, etc.
- B. Written notice shall be given by the Contractor to all public service corporations or officials owning or having charge of public or private utilities of his intention to commence operations affecting such utilities at least 48 hours exclusive of Saturdays, Sundays, and legal Holidays in advance of the start of such operations in accordance with Chapter 82 Section 40, of the General Laws, as amended, and the Contractor shall at the same time file a copy of said notice with the City
- C. When necessary, the Contractor shall cooperate with representatives of public service companies in order to avoid damage to their structures by furnishings and erecting suitable supports, props, shoring or other means of protection. Fire hydrants adjacent to the work at all time, shall be readily accessible to fire apparatus and no materials or other obstructions shall be placed within a radius of 10 feet of a fire hydrant.
- D. The Contractor shall contact Dig-Safe call center before commencing any sub-surface excavation work or operations.
- E. Although the drawings may indicate the approximate location of existing subsurface utilities in the vicinity of the work, the accuracy and completeness of the information is not guaranteed by the City. Before commencing any work, or operations which may endanger or damage any subsurface structures, the Contractor shall carefully locate all such structures and conduct his operations in such manner as to avoid damage thereto. He shall not interrupt live services until new services have been provided. All abandoned services shall be plugged or otherwise made secure.
- F. If the Contractor wishes to have any utilities temporarily relocated for his convenience, other than those specified by City, he shall make the necessary arrangements with the owners and make reimbursement for the cost thereof at his own expense.
- G. Land monuments and property markers shall be carefully protected and if necessary to remove the same, the Contractor shall do so only at the City's direction and after an authorized agent has witnessed or otherwise referenced their location.
- H. The Contractor shall not injure or remove trees or shrubs without proper authority. Insofar as possible the Contractor shall confine his movements and operations to the area within the limits of location and the area outside the scope of the work shall not be disturbed.
- I. Disturbance of damage to any above- or below-ground structures, conduits, cables, or the like, caused by any act of omission, neglect or misconduct in the execution or non-execution of work thereof by the Contractor shall be repaired, and/or replaced by the Contractor to the satisfaction of the City and at no additional expense to the City.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

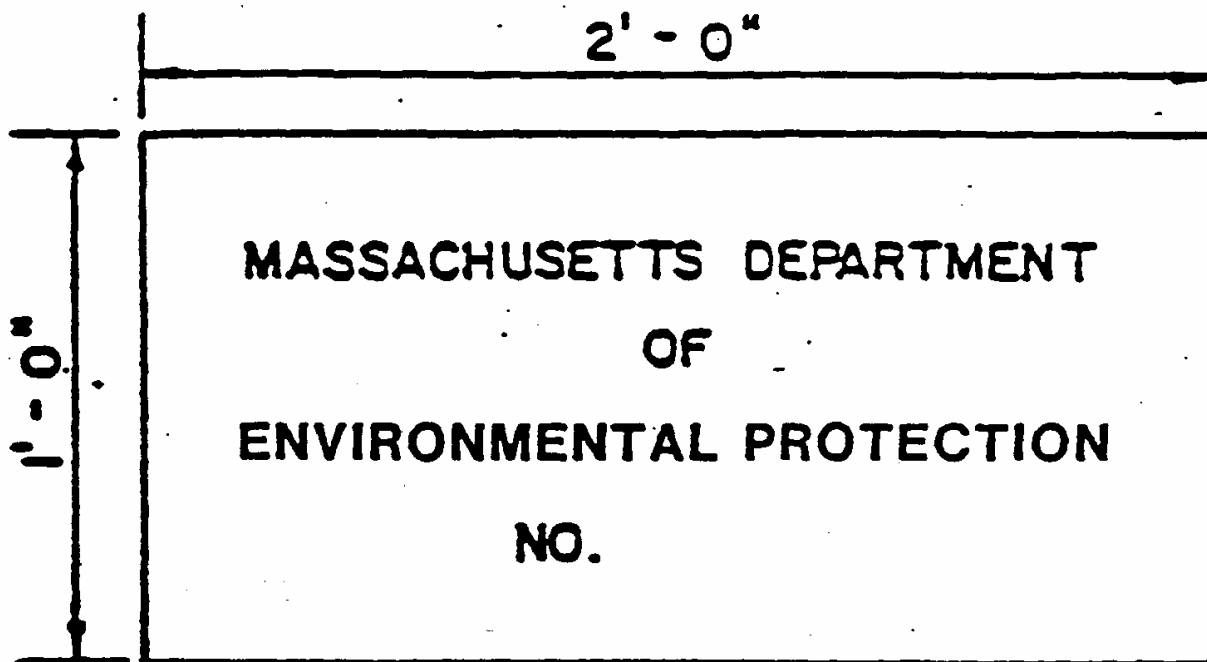
- J. Disturbance or damage to any structure shall be replaced or repaired by the Contractor to the satisfaction of the City and at no additional expense to the City.
- K. The Contractor shall receive no extra compensation for protection and restoration of property unless said compensation is authorized in writing by the City, as specified under Article VI of the Contract General Provisions.

1.25 Cleanup and Restoration

- A. After all construction operations are completed; the Contractor shall clean his area of operations of all boulders, stumps and debris and shall leave the area in clean and orderly condition. Any areas within or outside the limits of work, whether regarded or not, which have become scarred, rutted or eroded, due to conditions arising from work performed under this Contractor, shall be restored to their natural condition by filling and/or topsoiling, seeding or woodchip mulching as required by the City.
- B. The Contractor shall clean up all project work areas to permit the City to move in and occupy without any additional cleaning.
- C. The costs of the above paragraphs shall be included in the Contract prices and not direct or separate payment will be made to the Contractor.

1.26 Environmental Protection

- A. General
  - 1. The City shall secure the required environmental permits required under M.G.L. Chapters 131, 91 and those issued by the Army Corps of Engineers under Sections 404 and 10. The Contractor is obligated to conform to all the requirements of the permits and subsequent requirements issued by the governing agencies.
  - 2. Contracts operating under a DEP permit shall post a sign in a format consistent with that enclosed herein.



NOTES:

1. CONTRACTOR IS TO SUBMIT LETTER SIZE AND SPACING FOR THE COMPLETION OF THIS SIGN ACCORDING TO THE SKETCH GIVEN.
2. SIGN PLATE SHALL BE 3/4" PLYWOOD (MARINE GRADE).
3. THE LOCATION AND METHOD OF INSTALLATION OF THIS SIGN SHALL BE DETERMINED BY THE ENGINEER.
4. ONE (1) SIGN IS REQUIRED.

B. Prevention of Water Pollution

1. The Contractor shall take such precautions in the conduct of this operation as may be necessary to avoid contaminating water in adjacent watercourses or watercourse areas whether natural or man-made. All earthwork, moving of equipment, water control for excavation or foundation areas, and other operations likely to create silting shall be conducted so as to avoid pollution of watercourses of water storage areas.
2. Erosion Control: Such methods as may be necessary shall be utilized to effectively prevent erosion and sediment from entering nearby waterways, including but not limited to the following:

Control of Surface Water Runoff. The rate of runoff from the construction site shall be kept at a minimum and controlled. This includes construction of diversion ditches, trenches and berms to retard and divert runoff to protect watercourses.

3. The Contractor shall construct silt retention basins in areas of work adjacent to streams, or rivers, as directed by the City. These basins shall be removed upon completion of the work. Water used during the contract work which has become contaminated with oil, bitumen, harmful or objectionable chemicals, sewage or other pollutants shall be discharged so as to avoid affecting nearby waters.
4. Under no circumstances shall the Contractor discharge pollutants into any watercourse or water storage area. When water from adjacent natural sources is used in the contract work, intake methods shall be such as to avoid contaminating the source of supply.

C. Protection of Land Resources

1. General

Land resources within the project boundaries and outside the limits of the work as may be affected under the work of this Contract shall be preserved in their present condition, that will appear to be natural. The Contractor shall confine his construction activities to areas defined by the Drawings and Specifications.

2. Prevention of Landscape Defacement

Do not deface, injure, or destroy trees or shrubs, do not remove or cut them without special authority. No ropes, cables, or guys shall be fastened to or attached to any existing nearby trees for anchorages unless specifically approved. Where such special emergency use is permitted, adequately wrap the tree with burlap or rags over which softwood slats shall be tied. The Contractor shall be responsible for any damage resulting from such use. Where trees may possibly be defaced, bruised, injured, or otherwise damaged by equipment, dumping, or other operations, protect such trees by placing boards, planks or approved protective fencing around them. Monuments and markers shall be protected similarly before beginning operations near them.

C. Restoration of Landscape Damage

Any trees or other landscape feature scarred or damaged by equipment or operations shall be restored as nearly as possible to the original condition, as approved. All trimming or pruning shall be performed in an approved manner by licensed arborists with saws or pruning shears. Trimming with axes will not be permitted.

D. Plant Pest Control: All soil moving equipment that has operated in or will operate in regulated areas shall be subject to plant quarantine regulations. In general, these regulations require the thorough cleaning of soil from equipment before such equipment is moved from regulated areas to uninfested areas.

E. Noise Control: The Contractor shall use every effort and every means possible to minimize noises caused by his operations, which the City may consider as

objectionable. Each Contractor shall provide working machinery and equipment designed to operate with least possible noise, and when gearing is used, such gearing shall be of a type designed to reduce noise to a minimum. Compressors shall be equipped with silencers on intake lines. All gas or oil operated equipment shall be equipped with silencers or mufflers on intake and exhaust lines. Whenever practicable, electricity shall be used for power to reduce noise. Dumping bins, hoppers and trucks used for disposal of excavated materials shall be lined with wood or other sound-deadening material if required. Where required by agencies having jurisdiction, certain noise-producing work may have to be performed during specified periods only.

- F. Air Pollution Control: The Contractor shall conduct his operations so as not to violate any state and local ordinances pertaining to air pollution.
- G. Dust Control: The Contractor is placed on notice that blowing dust from unstabilized earth areas of the work will be considered a nuisance under his control. He shall, by spraying with water or by other approved means, dampen the soil to hold down the dust. The use of calcium chloride as a wetting agent will not be permitted. During working hours and before leaving the work for the evening, for weekends, or for a more extended period, the Contractor shall assess the moisture content of the soil and dampen it to the extent necessary to hold down the dust- While work is suspended he shall return to work, if so directed by the City, to maintain the dust control.

#### 1.27 Use of Explosives

The use of explosives will not be permitted in the work of this Contract, unless specifically specified in the technical Specifications and/or Drawings or approved by the City in writing.

#### 1.28 Measurement

- A. The method of measurement is set forth at the end of each Section of these Specifications.
- B. All measurements shall be confirmed by the City as they are made.
- C. The quantities of the various items of work performed shall be determined for purposes of the certifications of work performed that are generally required by law and as specified below.
  - 1. Upon completion of the work and before final payment is made the City will make final measurement to determine the quantities of the various items of work performed, as the basis for the final settlement. All measurements shall be made according to the United States Standard Units of Measurement.
  - 2. The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the Contract shall be selected by the City.
  - 3. Unless otherwise specified, longitudinal measurements for area computations will be made horizontally. Unless otherwise specified transverse measures for area computations will be the dimensions shown on the Drawings or in writing by the City.

4. Structures will be measured according to neat lines shown on the Drawings or as altered to fit field conditions.
5. All items which are measured by the linear foot, such as pipe, culverts, guardrail, curbing, etc., will be measured parallel to the base or foundation upon which such structures are placed, unless otherwise shown on the Drawings.
6. In computing volumes of excavation the average end area method or other methods acceptable to the City will be used.
7. A sworn weigher shall weigh all materials required to be weighed. The weighing of such materials may be witnessed by the City.
8. If materials are shipped by rail or trucks, the car weights or quarry weights may be accepted. Weight slips shall be provided for each shipment of material weighed. Each weight slip shall be signed by the sworn weigher. The weight slips shall be countersigned on delivery by the City and any weight slips not countersigned shall not be included for payment under the Contract.
9. When requested by the Contractor and approved by the City in writing, material specified to be measured by the cubic yard may be weighed and such weights will be converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the City and shall be agreed to by the Contractor before such method of measurement of pay quantity is used.
10. The term "lump sum" when used as a unit of payment will mean complete payment for the work described in the Contract and shall include all material and labor specified.
11. When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduits, etc., and these items are identified by gage, unit weight, section dimensions, etc., such identification will be considered to be nominal weight or dimensions. Unless more stringently controlled by tolerances in cited Specification manufacturing tolerances, established by the industries involved will be accepted.

#### 1.29 Payment

The basis of payment is set forth at the end of each Section of these Specifications.

#### 1.30 Changes in Quantities, Regulations of Work

The City reserves the right to increase or decrease quantities, to eliminate portions of the work or add work of similar nature, and to direct the commencement and order of prosecution of various portions of the work.

#### 1.31 Liens

Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, delivers to the City a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information, the releases and receipts include all labor and material for which a lien could be filed; but the Contractor may, if any Subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the City, to

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

indemnify him against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the City, all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

1.32 Costs of the Supplementary General Conditions

The costs of the above paragraphs shall be included in the Contract Price and no direct or separate payment shall be made to the Contractor as hereinafter specified.

**END OF SECTION**



**DOCUMENT 00855**  
**SPECIAL CONDITIONS - COMMONWEALTH OF MASSACHUSETTS**

Massachusetts General Laws (“2002 Official Edition”)

MGL C.30, S.39F	Construction Contracts Assignment and Subrogation; Subcontractor Defined; Enforcement of Claim For Direct Payment; Deposit, Reduction of Disputed Amounts
MGL. C.30, S.39G	Completion of Public Works; Semi-Final and Final Estimates; Payments; Extra Work; Disputed Items
MGL C.30, S.39I	Deviation from Plans and Specifications
MGL C.30, S.39J	Public Construction Contracts; Effects of Decisions of Contracting Body or Administrative Board
MGL C.30, S.39K	Public Building Construction Contracts; Payments
MGL C.30, S.39L	Public Construction Work by Foreign Corporations; Restrictions and Reports
MGL C.30, S.39M	Contracts for Construction and Materials; Manner of Awarding
MGL C.30, S.39N	Construction Contracts; Equitable Adjustment In Contract Price for Differing or Latent Physical Conditions
MGL C.30, S.39O	Contracts for Construction and Materials; Suspension, Delay or Interruption Due to Order of Awarding Authority; Adjustment in Contract Price; Written Claim
MGL C.30, S.39P	Contracts for Construction and Materials; Awarding Authority’s Decisions on Interpretation of Specifications, etc.: Time Limit; Notice
MGL C.30, S.39R	Definitions; Contract Provisions; Management and Financial Statements; Enforcement
MGL C.149, S.26	Public Works; Preference to Veterans and Citizens; Wages
MGL C.149, S.34	Public Contracts; Stipulation as to Hours and days of Work; Void Contracts
MGL C.82, S.40A	Excavations; Notice
MGL C.82, S. 40B	Designation of Location of Underground Utilities
MGL C. 82, S.40C	Excavator’s Responsibility to Maintain Designation Markings; Damage Caused by Excavator
MGL C. 82, S. 40D	Local Laws Requiring Excavation Permits; Public Ways

MGL C.82, S. 40E    Violations of Secs. 40A-40E; Punishment

MGL C.149, S.26    Minimum Wage Rates  
to 27D

The following excerpts are from the Massachusetts General Laws. The bidder shall make his own investigations to assure the accuracy of the excerpts by reviewing an Official Edition of the Massachusetts General Laws.

**CONSTRUCTION CONTRACTS; ASSIGNMENT AND SUBROGATION;  
SUBCONTRACTOR DEFINED; ENFORCEMENT OF CLAIM FOR DIRECT PAYMENT;  
DEPOSIT, REDUCTION OF DISPUTED AMOUNTS - (MGL C.30, s.39F)**

(1.) Every contract awarded pursuant to section forty-four A to L, inclusive, of chapter one hundred and forty-nine shall contain the following subparagraphs (a) through (I) and every contract awarded pursuant to section thirty-nine M of chapter thirty shall contain the following subparagraphs (a) through (h) and in each case those subparagraphs shall be binding between the general contractor and each subcontractor.

- (a) Forthwith after the general contractor receives payment on account of a periodic estimate, the general contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by the subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.
- (b) Not later than the sixty-fifth day after each subcontractor substantially completes his work in accordance with the plans and specifications, the entire balance due under the subcontract less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the awarding authority shall pay that amount to the general contractor. The general contractor shall forthwith pay to the subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.
- (c) Each payment made by the awarding authority to the general contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general contractor for the account of that subcontractor; and the awarding authority shall take reasonable steps to compel the general contractor to make each such payment to each such subcontractor. If the awarding authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor as provided in subparagraphs (a) and (b), the awarding authority shall act upon the demand as provided in this section.
- (d) If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of the balance from the awarding authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the

general contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered or so mailed the demand to the awarding authority and delivered or so mailed a copy to the general contractor, the general contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the awarding authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor and of the amount due for each claim made by the general contractor against the subcontractor.

- (e) Within fifteen days after receipt of the demand by the awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount (I) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general contractor in the sworn reply; provided, that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The awarding authority shall make further direct payments to the subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (I) and (ii) of this subparagraph.
- (f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (e) in an interest-bearing joint account in the names of the general contractor and the subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the general contractor and the subcontractor and shall notify the general contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general contractor and the subcontractor or as determined by a decree of a court of competent jurisdiction.
- (g) All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account for accounts in a bank pursuant to subparagraph (f) shall be made out of amount payable to the general contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the general contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the awarding authority to the general contractor to the extent of the such payment.
- (h) The awarding authority shall deduct from payments to a general contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph (f), are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the general contractor.
- (i) If the subcontractor does not receive payment as provided in subparagraph (a) or if the

general contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (a), the subcontractor may demand direct payment by following the procedure in subparagraph (d) and the general contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the general contractor. Thereafter the awarding authority shall proceed as provided in subparagraph (e), (f), (g) and (h).

**COMPLETION OF PUBLIC WORKS; SEMI-FINAL AND FINAL ESTIMATES;  
PAYMENTS; EXTRA WORK; DISPUTED ITEMS (MGL C. 30, s 39G)**

Upon substantial completion of the work required by a contract with the Commonwealth, or any agency or political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair or improvement of public ways, including bridges and other highway structures, sewers and, water mains, airports and other public works, the contractor shall present in writing to the awarding authority its certification that the work has been substantially completed. Within twenty-one days thereafter, the awarding authority shall present to the contractor either a written declaration that the work has been substantially completed or an itemized list of incomplete or unsatisfactory work items required by the contract sufficient to demonstrate that the work has not been substantially completed. The awarding authority may include with such a list a notice setting forth a reasonable time, which shall not in any event be prior to the contract completion date, within which the contractor must achieve substantial completion of the work. In the event that the awarding authority fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the contractor's certification within the twenty-one day period, the contractor's certification shall take effect as the awarding authority's declaration that the work has been substantially completed.

Within sixty-five days after the effective date of a declaration of a substantial completion, the awarding authority shall prepare and forthwith send to the contractor for acceptance a substantial completion estimate for the quantity and price of the work done and all but one percent retainage on that work, including the quantity, price and all but one percent retainage for the undisputed part of each work item and extra work item in dispute but excluding the disputed part thereof, less the estimated cost of completing all incomplete and unsatisfactory work items and less the total periodic payments made to date for the work. The awarding authority also shall deduct from the substantial completion estimate an amount equal to the sum of all demands for direct payment filed by subcontractors and not yet paid to subcontractors or deposited in joint accounts pursuant to section thirty-nine F, but no contract subject to said section thirty-nine F shall contain any other provision authorizing the awarding authority to deduct any amount by virtue of claims asserted against the contract by subcontractors, material suppliers or others.

If the awarding authority fails to prepare and send to the contractor any substantial completion estimate required by this section on or before the date herein above set forth, the awarding authority shall pay to the contractor interest on the amount which would have been due to the contractor pursuant to such substantial completion estimate at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston from such date to the date on which the awarding authority sends that substantial completion estimate to the contractor for acceptance or to the date of payment therefor, whichever occurs first. The awarding authority shall include the amount of such interest in the substantial completion estimate.

Within fifteen days after the effective date of the declaration of substantial completion, the

awarding authority shall send to the contractor by certified mail, return receipt requested, a complete list of all incomplete or unsatisfactory work items, and, unless delayed by causes beyond his control, the contractor shall complete all such work items within forty-five days after the receipt of such list or before the then contract completion date, whichever is later. If the contractor fails to complete such work within such time, the awarding authority may, subsequent to seven days' written notice to the contractor by certified mail, return receipt requested, terminate the contract and complete the incomplete or unsatisfactory work items and charge the cost of same to the contractor.

Within thirty days after receipt by the awarding authority of a notice from the contractor stating that all of the work required by the contract has been completed, the awarding authority shall prepare and forthwith send to the contractor for acceptance a final estimate for the quantity and price of the work done and all retainage on that work less all payments made to date, unless the awarding authority's inspection shows that work items required by the contract remain incomplete or unsatisfactory, or that documentation required by the contract has not been completed. If the awarding authority fails to prepare and send to the contractor the final estimate within thirty days after receipt of notice of completion, the awarding authority shall pay to the contractor interest on the amount which would have been due to the contractor pursuant to such final estimate at the rate hereinabove provided from the thirtieth day after such completion until the date on which the awarding authority sends the final estimate to the contractor for acceptance or the date of payment therefor, whichever occurs first, provided that the awarding authority's inspection shows that no work items required by the contract remain incomplete or unsatisfactory. Interest shall not be paid hereunder on amounts for which interest is required to be paid in connection with the substantial completion estimate as hereinabove provided. The awarding authority shall include the amount of the interest required to be paid hereunder in the final estimate.

The awarding authority shall pay the amount due pursuant to any substantial completion or final estimate within thirty-five days after receipt of written acceptance for such estimate from the contractor and shall pay interest on the amount due pursuant to such estimate at the rate hereinabove provided from that thirty-fifth day to the date of payment. Within 15 days, 30 days in the case of the commonwealth, after receipt from the contractor, at the place designated by the awarding authority, if such place is so designated, of a periodic estimate requesting payment of the amount due for the preceding periodic period, the awarding authority shall make a periodic payment to the contractor for the work performed during the preceding periodic estimate period and for the materials not incorporated in the work but delivered and suitably stored at the site, or some location agreed upon in writing, to which the contractor has title or which a subcontractor has title and has authorized the contractor to transfer title to the awarding authority, upon certification by the contractor that he is the lawful owner and that materials are free from all encumbrances. The awarding authority shall include with each such payment interest on the amount due pursuant to such periodic estimate at the rate herein above provided from the due date. In the case of periodic payments, the contracting authority may deduct from its payment a retention based on its estimate of the fair value of its claims against the contractor, a retention for direct payments to subcontractors based on demand for same in accordance with the provisions of section thirty-nine F, and a retention to secure satisfactory performance of the contractual work not exceeding five percent of the approved amount of any periodic payment, and the same right to retention shall apply to bonded subcontractors entitled to direct payment under section thirty-nine F of chapter thirty; provided, that a five percent value of all items that are planted in the ground shall be deducted from the periodic payments until final acceptance.

No periodic, substantial completion or final estimate or acceptance or payment thereof shall bar a contractor from reserving all rights to dispute the quantity and amount of, or the failure of the awarding authority to approve a quantity and amount of, all or part of any work item or extra work item.

Substantial completion, for the purposes of this section, shall mean either that the work required by the contract has been completed except for work having a contract price of less than one percent of the then adjusted total contract price, or substantially all of the work has been completed and opened to public use except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the work required by the contract.

#### DEVIATIONS FROM PLANS AND SPECIFICATIONS – (MGL C. 30, S 39I)

Every contractor having a contract for the construction, alteration, maintenance, repair or demolition of, or addition to, any public building or public works for the commonwealth, or of any political subdivision thereof, shall perform all the work required by such contract in conformity with the plans and specifications contained therein. No willful and substantial deviation from said plans and specifications shall be made unless authorized in writing by the awarding authority or by the engineer or architect in charge of the work who is duly authorized by the awarding authority to approve such deviations. In order to avoid delays in the prosecution of the work required by such contract such deviation from the plans or specifications may be authorized by a written order of the awarding authority or such engineer or architect so authorized to approve such deviation. Within thirty days thereafter, such written order shall be conformed by a certificate of the awarding authority stating: (1) If such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures or equipment were included in the first instance and the reasons for substitution or elimination, and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefor; (2) that the specified deviation does not materially injure the project as a whole; (3) that either the work substituted for the work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the contracting agency and the contractor and the amount in dollars of said adjustment; and (4) that the deviation is in the best interest of the contract authority. Such certificate shall be signed under the penalties of perjury and shall be a permanent part of the file record of the work contracted for.

Whoever violates any provision of this section willfully and with intent to defraud shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than six months, or both.

#### PUBLIC CONSTRUCTION CONTRACTS; EFFECTS OF DECISIONS OF CONTRACTING BODY OR ADMINISTRATIVE BOARD – (MGL, C. 30, S 39J)

Notwithstanding any contrary provision of any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or public works by the commonwealth, or by any county, city, town, district, board, commission or other public body, when the amount of the contract is more than five thousand dollars in the case of the commonwealth and more than two thousand dollars in the case of any county, city, district, board, commission or other public body, a decision, by the contracting body or by any administrative board, official or agency, or by any architect or engineer, on a dispute, whether of fact or of law, arising under said contract shall not be final or conclusive if such decision is made in bad faith, fraudulently, capriciously, or arbitrarily is unsupported by substantial evidence, or is based upon error of law.

#### PUBLIC BUILDING CONSTRUCTION CONTRACTS; PAYMENTS – (MGL, C. 30, S 39K)

Every contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building by the commonwealth, or by any county, city, town, district, board, commission, or other public body, when the amount is more than five thousand dollars in the case of the commonwealth and more than two thousand dollars in the case of any county, city, town, district, board, commission or other public body, shall contain the following paragraph:

Within fifteen days (30 days in the case of the commonwealth, including local housing authorities) after receipt from the contractor, at the place designated by the awarding authority if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the awarding authority will make a periodic payment to the Contractor for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the contractor has title or to which a subcontractor has title and has authorized the contractor to transfer title to the awarding authority upon certification by the contractor that he is the lawful owner and the materials are free from all encumbrances, less (1) a retention based on its estimate of the fair value of its claims against the contractor and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and less (3) a retention not exceeding five percent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sixty-five days after (a) the contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the awarding authority, less than one percent of the original contract price, or (b) the contractor substantially completes the work and the awarding authority takes possession for occupancy, whichever occurs first, the awarding authority shall pay the contractor the entire balance due on the contract less (1) a retention based on its estimate of the fair value of its claims against the contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, or based on the record of payments by the contractor to the subcontractors under this contract if such record of payment indicates that the contractor has not paid subcontractors as provided in section thirty-nine F. If the awarding authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the contractor; provided, that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen days (twenty-four days in the case of the commonwealth) after receipt of such a periodic estimate from the contractor, at the place designated by the awarding authority if such a place is so designated. The contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

The awarding authority may make changes in any periodic estimate submitted by the contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, but such changes or any requirement for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided, that the awarding authority may, within seven days after receipt, return to the contractor for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter. The provisions of section thirty-nine G shall not apply to any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building to which this section applies.

All periodic estimates shall be submitted to the awarding authority, or to its designee as set forth in writing to the contractor, and the date of receipt by the awarding authority or its designee shall be marked on the estimate. All periodic estimates shall contain a separate item for each filed subtrade and each sub-subtrade listed in subbid form as required by specifications and a column listing the amount paid to each subcontractor and sub-subcontractor as of the date the periodic estimate is filed. The person making payment for the awarding authority shall add the daily

interest provided for herein to each payment for each day beyond the due date based on the date of receipt marked on the estimate.

A certificate of the architect to the effect that the contractor has fully or substantially completed the work shall, subject to the provisions of section thirty-nine J, be conclusive for the purposes of this section.

Notwithstanding the provisions of the section, at any time after the value of the work remaining to be done is, in the estimation of the awarding authority, less than 1 percent of the adjusted contract price, or the awarding authority has determined that the contractor has substantially completed the work and the awarding authority has taken possession for occupancy, the awarding authority may send to the general contractor by certified mail, return receipt requested, a complete and final list of all incomplete and unsatisfactory work items, including for each item on the list, a good faith estimate of the fair and reasonable cost of completing such item. The general contractor shall then complete all such work items within 30 days of receipt of such list or before the contract completion date, whichever is later. If the general contractor fails to complete all incomplete and unsatisfactory work items within 45 days after receipt of such items furnished by the awarding authority or before the contract completion date, whichever is later, subsequent to an additional 14 days' written notice to the general contractor by certified mail, return receipt requested, the awarding authority may terminate the contract and complete the incomplete and unsatisfactory work items and charge the cost of same to the general contractor and such termination shall be without prejudice to any other rights or remedies the awarding authority may have under the contract. The awarding authority shall note any such termination in the evaluation form to be filed by the awarding authority pursuant to the provisions of section 44D of chapter 149.

#### **PUBLIC CONSTRUCTIONWORK BY FOREIGN CORPORATIONS; RESTRICTIONS AND REPORTS – (MGL C. 30, S 39L)**

The Commonwealth and every county, city, town, district, board, commission or other public body which, as the awarding authority, requests proposals, bids or subbids for any work in the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or other public works (1) shall not enter into a contract for such work with, and shall not approve as a subcontractor furnishing labor and materials for a part of any such work, a foreign corporation which has not filed with such awarding authority a certificate of the state secretary stating that such corporation has complied with sections three and five of chapter one hundred and eighty-one and the date of such compliance, and (2) shall report to the state secretary and to the department of corporations and taxation any foreign corporation performing work under such contract or subcontract, and any person, other than a corporation, performing work under such contract or subcontract, and residing or having a principal place of business outside the Commonwealth.

#### **CONTRACTS FOR CONSTRUCTION AND MATERIALS; MANNER OF AWARDING – (MGL, C 30, S 39M)**

- (a) Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work, or for the purchase of any material, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district, or housing authority, and estimated by the awarding authority to cost more than ten thousand dollars, and every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency, as defined by subsection one of section forty-four A of chapter one hundred and forty-nine, estimated to cost more than ten thousand dollars but not more than twenty-five thousand dollars, shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids publicly opened and read by such awarding authority forthwith upon expiration of the time for the



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BROWNFIELD SOILS REMOVAL AND REMEDIATION

filing thereof; provided, however, that such awarding authority may reject any and all bids, if it is in the public interest to do so. Every bid for such contract shall be accompanied by a bid deposit in the form of a bid bond, or cash, or a certified check on, or a treasurer's or cashier's check issued by, a responsible bank or trust company, payable to the awarding authority. The amount of such bid deposit shall be five per cent of the value of the bid. Any person submitting a bid under this section shall, on such bid, certify as follows:

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

(Name of person signing bid)

(Company)

This paragraph shall not apply to the award of any contract subject to the provisions of sections forty-four A to forty-four L, inclusive, of chapter one hundred and forty-nine and every such contract shall continue to be awarded as provided therein. In cases of extreme emergency caused by enemy attack, sabotage or other such hostile actions or resulting from explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe, an awarding authority may, without competitive bids and notwithstanding any general or special law, award contracts otherwise subject to this paragraph to perform work and to purchase or rent materials and equipment, all as may be necessary for temporary repair and restoration to service of any and all public work in order to preserve the health and safety of persons or property; provided that this exception shall not apply to any permanent reconstruction, alteration, remodeling or repair of any public work.

- (b) Specifications for such contracts, and specifications for contracts awarded pursuant to the provisions of said sections forty-four A to forty-four L of said chapter one hundred and forty-nine, shall be written to provide for full competition for each item of material to be furnished under the contract; except, however, that said specifications may be otherwise written for sound reasons in the public interest stated in writing in the public records of the awarding authority or promptly given in writing by the awarding authority to anyone making a written request therefore, in either instance such writing to be prepared after reasonable investigation. Every such contract shall provide that an item equal to that named or described in the said specifications may be furnished; and an item shall be considered equal to the item so named or described if, in the opinion of the awarding authority; (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the said specifications. For each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or procedures, and for the equal of any one said named or described materials.
- (c) The term "lowest responsible and eligible bidder" shall mean the bidder (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (3) who, where the provision of section eight B of chapter twenty-nine apply, shall

have been determined to be qualified thereunder; and (4) who obtains within ten days of the notification of contract award the security by bond required under section twenty-nine of chapter one hundred and forty-nine; provided that for the purposes of this section the term "security by bond" shall mean the bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority.

(d) The provisions of this section shall not apply (1) to the extent that they prevent the approval of such specifications by any contributing federal agency, (2) to materials purchased under specifications of the state department of highways at prices established by the said department pursuant to advertisement and bidding in connection with work to be performed under the provisions of chapter eighty-one or chapter ninety, (3) to any transaction between the commonwealth and any of its political subdivisions or between the commonwealth and any public service corporation, and (4) to any contract of not more than twenty-five thousand dollars awarded by a governmental body, as defined by section two of chapter thirty B, in accordance with the provisions of section five of said chapter thirty B; and (5) to any contract solely for the purchase of material awarded by a governmental body, as defined by section 2 of chapter 30B, in accordance with section 5 of said chapter 30B.

(e) The word "material" as used in this section shall mean and include any article, assembly, system, or any component part thereof.

#### CONSTRUCTION CONTRACTS; EQUITABLE ADJUSTMENT IN CONTRACT PRICE FOR DIFFERING OR LATENT PHYSICAL CONDITIONS – (MGL, C. 30, S 39N)

"Every contract subject to section forty-four A of chapter one hundred and forty-nine or subject to section thirty-nine M of chapter thirty shall contain the following paragraph in its entirety and an awarding authority may adopt reasonable rules or regulations in conformity with that paragraph concerning the filing, investigation and settlement of such claims:

If, during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly."

#### CONTRACTS FOR CONSTRUCTION AND MATERIALS; SUSPENSION, DELAY OR INTERRUPTION DUE TO ORDER OF AWARDED AUTHORITY; ADJUSTMENT IN CONTRACT PRICE; WRITTEN CLAIM (MGL, Chapter 30: Section 39O)

Every contract subject to the provisions of section thirty-nine M of this chapter or subject to section forty-four A of chapter one hundred forty-nine shall contain the following provisions (a) and (b) in their entirety and, in the event a suspension, delay, interruption or failure to act of the awarding authority increases the cost of performance to any subcontractor, that subcontractor

shall have the same rights against the general contractor for payment for an increase in the cost of his performance as provisions (a) and (b) give the general contractor against the awarding authority, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights which the general contractor or the subcontractor may have against each other.

(a) The awarding authority may order the general contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the awarding authority; provided however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

(b) The general contractor must submit the amount of a claim under provision (a) to the awarding authority in writing, as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim incurred more than twenty days before the general contractor notified the awarding authority in writing of the act of failure to act involved in the claim.

#### CONTRACTS FOR CONSTRUCTION AND MATERIALS; AWARDING AUTHORITY'S DECISIONS ON INTERPRETATION OF SPECIFICATIONS, ETC.; TIME LIMIT; NOTICE – (MGL, C 30, S 39P)

Every contract subject to section thirty-nine M of this chapter or section forty-four A of chapter one hundred forty-nine which requires the awarding authority, any official, its architect or engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, shall require that the decision be made promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the awarding authority, the official, architect or engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made.

#### DEFINITIONS; CONTRACT PROVISIONS; MANAGEMENT AND FINANCIAL STATEMENTS; ENFORCEMENT - (MGL, C. 30, S 39R)

(a) The words defined herein shall have the meaning stated below whenever they appear in this section:

- (1) "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to sections thirty-eight A1/2 to thirty-eight O, inclusive, of chapter seven and any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, section thirty-nine M of chapter thirty, or sections forty-four A to forty-four H, inclusive, of chapter one hundred and forty-nine, which is for an amount or estimated amount greater than one hundred thousand dollars.

- (2) "Contract" means any contract awarded or executed pursuant to sections thirty-eight A1/2 to thirty-eight O, inclusive, of chapter seven and any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, section thirty-nine M of chapter thirty, or sections forty-four A through forty-four H, inclusive, of chapter one hundred and forty-nine, which is for an amount or estimated amount greater than one hundred thousand dollars.
- (3) "Records" means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.
- (4) "Independent Certified Public Accountant" means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with the awarding authority.
- (5) "Audit", when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a certified opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.
- (6) "Accountant's Report", when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which he has made and sets forth his opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefor shall be stated. An accountant's report shall include as a part thereof a signed statement by a responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the contractor.
- (7) "Management", when used herein, means the chief executive officers, partners, principals, or other person or persons primarily responsible for the financial and operational policies and practices of the contractor.
- (8) Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.
- (b) Subsection (a)(2) hereof notwithstanding, every agreement or contract awarded or executed pursuant to sections thirty-eight O, inclusive, of chapter 7, or eleven C of chapter twenty-five A, and pursuant to section thirty-nine M of chapter thirty or to section forty-four A through H, inclusive, of chapter one hundred and forty-nine, shall provide that:
  - (1) The contractor shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the contractor, and

- (2) until the expiration of six years after final payment, the office of inspector general, and the commissioner of capital asset management and maintenance shall have the right to examine any books, documents, papers or records of the contractor or of his subcontractors that directly pertain to, and involve transactions relating to, the contractor or his subcontractors, and
  - (3) if the agreement is a contract as defined herein, the contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his description the date of the change and reasons therefor, and shall accompany said description with a letter from the contractor's independent certified public accountant approving or otherwise commenting on the changes, and
  - (4) if the agreement is a contract as defined herein, the contractor has filed a statement of management on internal accounting controls as set forth in paragraph (c) below prior to the execution of the contract, and
  - (5) if the agreement is a contract as defined herein, the contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in paragraph (d) below.
- (c) Every contractor awarded a contract shall file with the awarding authority a statement of management as to whether the system of internal accounting controls of the contractor and its subsidiaries reasonably assures that:
- (1) transactions are executed in accordance with management's general and specific authorization;
  - (2) transactions are recorded as necessary:
    - (i) to permit preparation of financial statements in conformity with generally accepted accounting principles, and
    - (ii) to maintain accountability for assets;
  - (3) access to assets is permitted only in accordance with management's general or specific authorization; and
  - (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.
- Every contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating that he has examined the statement of management on internal accounting controls, and expressing an opinion as to:
- (1) whether the representations of management in response to this paragraph and paragraph (b) above are consistent with the result of management's evaluation of the system of internal accounting controls; and
  - (2) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements.
- (d) Every contractor awarded a contract by the commonwealth or by any political subdivision

thereof shall annually file with the commissioner of capital asset management and maintenance during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the awarding authority upon request.

- (e) The office of inspector general, the commissioner of capital asset management and maintenance and any other awarding authority shall enforce the provisions of this section. The commissioner of capital asset management and maintenance may after providing an opportunity for the inspector general and other interested parties to comment, promulgate pursuant to the provisions of chapter thirty A such rules, regulations and guidelines as are necessary to effectuate the purposes of this section. Such rules, regulations and guidelines may be applicable to all awarding authorities. A contractor's failure to satisfy any of the requirements of this section may be grounds for debarment pursuant to section forty-four C of chapter one hundred and forty-nine.
- (f) Records and statements required to be made, kept or filed under the provisions of this section shall not be public records as defined in section seven of chapter four and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of clause (2) of paragraph (b).

**PUBLIC WORKS; PREFERENCE TO VETERANS AND CITIZENS; WAGES - (MGL, C. 149, S 26)**

In the employment of mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works by the commonwealth, or by a county, town or authority or district, or by persons contracting or subcontracting for such works, preference shall first be given to citizens of the commonwealth who have been residents of the commonwealth for at least six months at the commencement of their employment who are male veterans as defined in clause Forty-third of section seven of chapter four, and who are qualified to perform the work to which the employment relates; and secondly, to citizens of the commonwealth generally who have been residents of the commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States, and every contract for such work shall contain a provision to this effect. Each county, town or district in the construction of public works, or persons contracting or subcontracting for such works, shall give preference to veterans and citizens who are residents of such county, town, authority or district. The rate per hour of the wages paid to said mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works shall not be less than the rate or rates of wages to be determined by the commissioner as hereinafter provided; provided, that the wages paid to laborers employed on said works shall not be less than those paid to laborers in the municipal service of the town or towns where said works are being constructed; provided, further, that where the same public work is to be constructed in two or more towns, the wages paid to laborers shall not be less than those paid to laborers in the municipal service of the town paying the highest rate; provided, further, that if, in any of the towns where the works are to be constructed, a wage rate or wage rates have been established in certain trades and occupations by collective agreements or understandings in the private construction industry between organized labor and employers, the rate or rates to be paid on said works shall not be less than the rates so established; provided further, that in towns where no such rate or rates have been so established, the wages paid to mechanics and apprentices, teamster, chauffeurs and laborers on public works, shall not be less than the wages paid to the employees in the same trades and occupations by private employers engaged in the construction industry. This section shall also apply to regular employees of the commonwealth or of a county, town, authority or district, when such employees are employed in the construction, addition to or alteration of public buildings for

which special appropriation of more than One Thousand Dollars are provided. Payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided.

Permanent and temporary laborers employed by the state department of highways and by the metropolitan district commission shall receive such salary or compensation as may be fixed under and in accordance with sections forty-five to fifty inclusive of chapter thirty.

**PUBLIC CONTRACTS; STIPULATION AS TO HOURS AND DAYS OF WORK; VOID CONTRACTS - (MGL, C. 149, S 34)**

Every contract, except for the purchase of material or supplies, involving the employment of laborers, workmen, mechanics, foremen or inspectors, to which the commonwealth or any county or town, subject to section thirty, is a party, shall contain a stipulation that no laborer, workman, mechanic, foreman or inspector working within the commonwealth, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or apart of the work contemplated by the contract, shall be required or permitted to work more than eight hours in any one day or more than forty-eight hours in any one week, or more than six days in any one week, except in case of emergency, or, in case any town subject to section thirty-one is a party to such a contract, more than eight hours in any one day, except as aforesaid, provided, that in contracts entered into by the department of highways for the construction or reconstruction of highways there may be inserted in said stipulation a provision that said department, or any contractor or subcontractor for said department, may employ laborers, workmen, mechanics, foremen and inspectors for more than eight hours in any one day in such construction or reconstruction when, in the opinion of the commissioner of labor and industries, public necessity so requires. Every such contract not containing the aforesaid stipulation shall be null and void.

**EXCAVATIONS; NOTICE – (MGL, C.82, S.40A)**

No excavator installing a new facility or an addition to an existing facility or the relay or repair of an existing facility shall, except in an emergency, make an excavation, in any public or private way, any company right-of-way or easement or any public or privately owned land or way, unless at least 72 hours, exclusive of Saturdays, Sundays, and legal holidays but not more than 30 days before the proposed excavation is to be made, such excavator has pre-marked not more than 500 feet of the proposed excavation and given an initial notice to the system. Such initial notice shall set forth a description of the excavation location in the manner as herein defined. In addition, such initial notice shall indicate whether any such excavation will involve blasting and, if so, the date and the location at which such blasting is to occur.

The notice requirements shall be waived in an emergency as defined herein; provided, however, that before such excavation begins or during a life threatening emergency, notification shall be given to the system and the initial point of boring or excavation shall be pre-marked. The excavator shall ensure that the underground facilities of the utilities in the area of such excavation shall not be damaged or jeopardized.

In no event shall any excavation by blasting take place unless notice thereof, either in the initial notice or a subsequent notice accurately specifying the date and location of such blasting shall have been given and received at least 72 hours in advance, except in the case of an unanticipated obstruction requiring blasting when such notice shall be not less than four hours prior to such blasting. If any such notice cannot be given as aforesaid because of an emergency requiring blasting, it shall be given as soon as may be practicable but before any explosives are discharged.

**DESIGNATION OF LOCATION OF UNDERGROUND FACILITIES – (MGL C.82, S.40B)**

Within 72 hours, exclusive of Saturdays, Sundays and legal holidays, from the time said initial notice is received by the system or at such time as said company and the excavator agree, such company shall respond to the initial notice or subsequent notice by designating the location of the underground facilities within 15 feet in any direction of the pre-marking so that the existing facilities are to be found within a safety zone. Such safety zone shall be so designated by the use of standard color-coded markings. The providing of such designation by the company shall constitute prima facie evidence of an exercise of reasonable precaution by the company as required by this section; provided however, that in the event that the excavator has given notice as aforesaid at a location at which because of the length of excavation the company cannot reasonably designate the entire location of its facilities within such 72 hour period, then such excavator shall identify for the company that portion of the excavation which is to be first made and the company shall designate the location of its facilities in such portion within 72 hours and shall designate the location of its facilities in the remaining portion of the location within a reasonable time thereafter. When an emergency notification has been given to the system, the company shall make every attempt to designate its facilities as promptly as possible.

#### EXCAVATOR'S RESPONSIBILITY TO MAINTAIN DESIGNATION MARKINGS; DAMAGE CAUSED BY EXCAVATOR – (MGL C.82 S.40C)

After a company has designated the location of its facilities at the location in accordance with section 40 B, the excavator shall be responsible for maintaining the designation markings at such locations, unless such excavator requests remarking at the location due to the obliteration, destruction or other removal of such markings. The company shall then remark such location within 24 hours following receipt of such request.

When excavating in close proximity to the underground facilities of any company when such facilities are to be exposed, non-mechanical means shall be employed, as necessary, to avoid damage in locating such facility and any further excavation shall be performed employing reasonable precautions to avoid damage to any underground facilities including, but not limited to, any substantial weakening of structural or lateral support of such facilities, penetration or destruction of any pipe, main, wire or conduit or the protective coating thereof, or damage to any pipe, main, wire or conduit.

If damage to such pipe, main, wire or conduit or its protective coating occurs, the company shall be notified immediately by the excavator responsible for causing such damage.

The making of an excavation without providing the notice required by section 40A with respect to any proposed excavation which results in any damage to a pipe, main, wire or conduit, or its protective coating, shall be prima facie evidence in any legal or administrative proceeding that such damage was caused by the negligence of such person.

#### LOCAL LAWS REQUIRING EXCAVATION PERMITS; PUBLIC WAYS – (MGL C.82 S.40D)

Nothing in this section shall effect or impair local ordinances or by-laws requiring a permit to be obtained before excavation in a public way or on private property; but notwithstanding any general or special law, ordinance or by-law to the contrary, to the extent that any permit issued under the provisions of the state building code or state fire code requires excavation by an excavator on a public way or on private property, the permit shall not be valid unless the excavator notifies the system as required pursuant to sections 40 and 40A, before the commencement of the excavation, and has complied with the permitting requirements of chapter 82A.

#### VIOLATIONS OF SECS. 40A-40E; PUNISHMENT (MGL C.82 S.40E)



AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

Any person or company found by the department of telecommunications and energy, after a hearing, to have violated any provision of sections 40A to 40E, inclusive, shall be fined \$500 for the first offense and not less than \$1,000 nor more than \$5,000 for any subsequent offence within 12 consecutive months as set forth by the rules of said department; provided, however, that nothing herein shall be construed to require forfeiture of any penal sum by a state or local government body for violation of section 40A or 40C; and provided, further, that nothing herein shall be construed to require the forfeiture of any penal sum by a residential property owner for the failure to Pre-mark for an excavation on such person's residential property.

MINIMUM WAGE RATES

In compliance with Massachusetts Laws, Chapter 149, Sections 26 to 27D inclusive, job classifications and determinations of the rate of wages applying thereto have been established by the Executive Office of Labor of the Commonwealth of Massachusetts and are included below.

END OF SECTION

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

DOCUMENT 00905

**CHANGE ORDER FORM**

**Date:** \_\_\_\_\_

Change Order Number: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Project: AMESBURY HERITAGE PARK –  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

Engineer: \_\_\_\_\_

Owner: City of Amesbury, Massachusetts

Contractor: \_\_\_\_\_

Contract Date: \_\_\_\_\_

To: \_\_\_\_\_  
(Contractor)

You are hereby authorized and directed to make the changes noted below in the subject Contract.

Approved By: \_\_\_\_\_  
(Owner)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Date)

Description and Reason for Change:

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

These changes result in the following adjustment of Contract Price and Contract Time:

Original Contract Price: \$ \_\_\_\_\_

**Contract Price prior to this Change Order:** \$ \_\_\_\_\_

The Contract Price due to this Change Order will be  
(Increased) (Decreased) by: \$ \_\_\_\_\_

The New Contract Price including this Change Order: \$ \_\_\_\_\_

This Change Order (Increases) (Decreases) the Contract Time by:  
\_\_\_\_\_ Calendar Days and/or \_\_\_\_\_ Working Days

The revised Contract Completion Date is: \_\_\_\_\_

Other Contracts affected (if any): \_\_\_\_\_

**Reviewed By:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**Accepted By:** \_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Certification of Appropriation under M.G.L. c.44, s.31c: Adequate funding in an amount sufficient to cover the total cost of this change order is available.

By: \_\_\_\_\_  
Certification Officer

\_\_\_\_\_  
Date

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

DOCUMENT 00945

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

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Owner's Project No. \_\_\_\_\_ Engineer's Project No. \_\_\_\_\_

Project: AMESBURY HERITAGE PARK - BROWNFIELD SOILS REMOVAL AND  
REMEDICATION,

Amesbury Massachusetts

---

Contractor \_\_\_\_\_

Contract For \_\_\_\_\_ Contract Date \_\_\_\_\_

---

This Certificate of Substantial Completion applies to all Work under the Contract Documents or  
to the following specified parts thereof:

To \_\_\_\_\_  
Owner

And To \_\_\_\_\_  
Contractor

---

The Work to which this Certificate applies has been inspected by authorized representatives of  
Owner, Contractor, and Engineer, and that Work is hereby declared to be substantially complete  
in accordance with the Contract Documents on

\_\_\_\_\_  
Date of Substantial Completion

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of Contractor to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by Contractor within \_\_\_\_\_ days of the above date of Substantial Completion.

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as follows:

Responsibilities:

Owner: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contractor: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

---

The following documents are attached to and made a part of this Certificate:

---

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

---

Executed by Engineer on \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Engineer

By \_\_\_\_\_

Contractor accepts this Certificate of Substantial Completion on \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Contractor

By \_\_\_\_\_

Owner accepts this Certificate of Substantial Completion on \_\_\_\_\_, 20\_\_\_\_

Owner

\_\_\_\_\_

\_\_\_\_\_ By \_\_\_\_\_

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

DOCUMENT 00950

**WAIVER OF LIENS**

**Contract No.:** \_\_\_\_\_

**Agreement Date:** \_\_\_\_\_

**Owner:** City of Amesbury, Massachusetts

**Project Name:** AMESBURY HERITAGE PARK - BROWNFIELD SOILS REMOVAL AND  
REMEDICATION

Completion Date per Agreement and Change Orders: \_\_\_\_\_

The undersigned contractor hereby swears under penalty of perjury that (1) all previous progress payments received from the Owner on account of work performed under the Contract referred to above have been applied by the undersigned to discharge, in full, all obligations of the undersigned incurred in connection with work covered by prior Estimates for Partial Payment under said contract, being Estimates Number 1 through \_\_\_\_\_ inclusive; and (2) all labor, materials and equipment incorporated in said Project or otherwise listed in or covered by these Estimates for Partial Payment are free and clear of all liens claims, security interests and encumbrances, except those listed below by obligee, nature and amount of obligation and covered by appropriate bond or bonds, as listed beside each obligation and attached to and made a part of this certification.

Obligation

Bond

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signed by Officer of Corporation

\_\_\_\_\_  
Title

COUNTY OF \_\_\_\_\_

STATE OF \_\_\_\_\_

Before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ personally appeared \_\_\_\_\_ known to me, who being duly sworn, did depose and save that he is the \_\_\_\_\_ (Officer) of the Contractor above mentioned; that he executed the above statement on behalf of said Contractor and that all of the statements contained therein are true, correct and complete.

\_\_\_\_\_  
NOTARY PUBLIC

AMESBURY HERITAGE PARK  
BROWNFIELD SOILS REMOVAL AND REMEDIATION

DOCUMENT 00960

**CERTIFICATE OF FINAL PAYMENT**  
**AND COMPLETION OF WORK**

Contract No.: \_\_\_\_\_ Agreement Date: \_\_\_\_\_

Owner: City of Amesbury, Massachusetts

Completion Date per Agreement and Change Orders: \_\_\_\_\_

FINAL CERTIFICATION OF CONTRACTOR

Name: \_\_\_\_\_

Address: \_\_\_\_\_

agrees to accept \$ \_\_\_\_\_ as full and final payment for all work completed under  
this Contract dated \_\_\_\_\_ with the City of Amesbury, Massachusetts (Owner) for

Project Name: **AMESBURY HERITAGE PARK –**  
**BROWNFIELD SOILS REMOVAL AND REMEDIATION**

I certify that all construction has been carried out in substantial compliance with the Contract Documents, and that all labor, equipment, materials and Subcontractors have been or will be paid in accordance with the requirements of the General Laws of the Commonwealth of Massachusetts.

Date

Contractor

\_\_\_\_\_  
Signed by Officer of Corporation

\_\_\_\_\_  
Title